No. 16–1362

In the Supreme Court of the United States

ENCINO MOTORCARS, LLC,
PETITIONER,

v.

HECTOR NAVARRO, MIKE SHIRINIAN, ANTHONY PINKINS, KEVIN MALONE, AND REUBEN CASTRO,
RESPONDENTS.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Does the Fair Labor Standards Act's overtime-pay exemption for certain automobile dealership "salesm[e]n, partsm[e]n, or mechanic[s]," 29 U.S.C. § 213(b)(10)(A), also exempt service advisors from the statute's overtime protections?

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INTRODUCTION

The Fair Labor Standards Act of 1938 (FLSA) guarantees nonexempt employees time-and-a-half pay for hours worked beyond forty per week. 29 U.S.C. § 207(a)(1). From 1961 to 1966, all automobile dealership employees were exempt from overtime pay. In 1966, Congress repealed this blanket exemption and replaced it with one that (as amended again in 1974) was limited to a particular subset of three enumerated occupations: "any [1] salesman, [2] partsman, or [3] mechanic" who is "primarily engaged in selling or servicing automobiles, trucks, or farm implements." 29 U.S.C. § 213(b)(10)(A).

Service advisors advise customers and act as liaisons to mechanics, so they do not fit within the three statutory occupations. The statute therefore entitles them to overtime pay. Petitioner concedes that they do not "go under the hood to service cars," Br. 25, 30, but nonetheless seeks to shoehorn them in to the exemption by contriving the nonexistent (and inherently contradictory) category of "salesmen primarily engaged in servicing automobiles." Petitioner misreads "salesman" to include anyone who ever sells at all, "primarily" to sweep in service advisors' incidental or occasional duties, "engaged in" to mean performing tasks "integral to the process of servicing vehicles" or to the "servicing process" (Br. 13, 42), "servicing" to extend beyond manual labor, and "automobiles" to include automobile services.

Petitioner offers its textual analysis with hardly a dictionary definition (Br. 30) and its supposed "fundamental rule of grammar" (Br. 26–28) with nary a grammatical authority. Dictionaries, inter-

pretive canons, Scalia & Garner, an opinion of this Court by Chief Justice John Marshall, and computer searches of millions of books are all to the contrary, not to mention more than a hundred analogously worded statutes that are appended to this brief. Dozens of dealership occupations are protected by the statute, and only three enumerated occupations are exempt. Expanding them to include a fourth would not only violate the statute's text and structure, but disrupt settled industry pay practices and ensnare courts in unnecessary further rounds of line-drawing.

STATEMENT

A. Statutory and Regulatory Background

1. The FLSA promotes a "'general maximum working week'" and combats "the evil of 'overwork' as well as 'underpay.'" *Overnight Motor Transp. Co.* v. *Missel*, 316 U.S. 572, 578 (1942) (quoting President Franklin Roosevelt). Thus, it generally requires employers to pay time-and-a-half for hours worked beyond forty per week. 29 U.S.C. § 207(a)(1). Congress exempted specific occupations from this overtime-pay mandate. *See id.* §§ 207, 213.

2. In 1961, Congress enacted a blanket exemption from the FLSA's minimum-wage and overtime provisions for "any employee of a retail or service establishment which is primarily engaged in the business of selling automobiles, trucks, or farm implements." Fair Labor Standards Amendments of 1961, Pub. L. No. 87-30, § 9, 75 Stat. 65, 73 (codified at 29 U.S.C. § 213(a)(19) (1964)). Thus, from 1961 to 1966, all automobile dealership employees were exempt from the overtime-pay requirement, whether they

were salesmen, receptionists, managers, accountants, mechanics, lube technicians, painters, car jockeys, towermen, car washers, detailers, partsmen, stockers, parts runners, service advisors, or janitors.

3. In 1966, Congress repealed the blanket dealership exemption from the minimum wage and narrowed it as to overtime pay. The Senate's floor discussion focused on the need for employees in three specific occupations—salesmen, partsmen, and mechanics—to work long and unpredictable hours, sometimes off-site. Senators emphasized that salesmen sold automobiles outside business hours, mechanics traveled for rural service calls, and farm-implement partsmen (the partsmen who were the focus of the congressional debate) had to respond to emergency calls for parts around the clock. 112 Cong. Rec. 20,502–04 (Aug. 24, 1966) (Sens. Bayh, Hruska, Mansfield, and Yarborough).

The 1966 statute thus exempted only those three occupations at automobile dealerships: "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft." Fair Labor Standards Amendments of 1966, Pub. L. No. 89-601, § 209, 80 Stat. 830, 836, *reprinted at* App., *infra*, A1.

4. In 1974, Congress revisited the exemption and enacted the current statutory text, amending the lists of subjects and objects and the gerunds that apply to each. Congress split the 1966 amendment into two subsections: one for "any salesman, partsman, or mechanic primarily engaged in *selling* or *servicing* automobiles, trucks, or farm implements," and the other for "any salesman primarily engaged in *selling*

trailers, boats, or aircraft." Fair Labor Standards Amendments of 1974, Pub. L. No. 93-259, § 14, 88 Stat. 55, 65 (emphases added), *reprinted at* App., *infra*, A2. The first subsection of the 1974 amendment, § 213(b)(10)(A), is the statutory text now under review.

5. In 1970, the Department of Labor (DOL) issued an interpretive rule clarifying that service advisors do not fall within the salesman /partsman/mechanic exemption, because they "are not themselves primarily engaged in the work of a salesman, partsman, or mechanic." 35 Fed. Reg. 5856, 5896 (Apr. 9, 1970) (codified at 29 C.F.R. § 779.372(c)(4) (1971)). But after several lower courts refused to defer to the 1970 interpretive rule, DOL issued nonbinding enforcement materials, declining for a time to enforce the FLSA's overtime provisions with respect to service advisors. Opp. 3–4.

In 2008, DOL issued a notice of proposed rulemaking to review the 1970 interpretive rule. 73 Fed. Reg. 43,654, 43,658–59, 43,671 (July 28, 2008). In 2011, after reviewing the comments it received, DOL issued a regulation that declined to broaden the statutory exemption to include service advisors. It explained that only "salesmen who sell vehicles and partsmen and mechanics who service vehicles" should be exempt, not service advisors. 76 Fed. Reg. 18,832, 18,838 (Apr. 5, 2011).

B. Facts and Procedural History

1. Respondents work (or worked) as service advisors for petitioner, a Mercedes-Benz automobile deal-

ership in the Los Angeles area. J.A. 54–56. Their job is to "meet and greet" customers, "accept cars for service," "suggest[] that certain services be conducted" based on "complaints given [to] them by the[] vehicle owners," and suggest "supplemental service." J.A. 54–55. After communicating with customers, they "write up an estimate for the repairs and services." J.A. 55. Porters then take automobiles back "to the mechanics . . . for repair and maintenance." *Id.*

During the dealership's regular business hours, the service advisors "are required to remain at their service posts" in the dealership's service department. J.A. 54. The dealership requires them to work from 7 a.m. to 6 p.m. at least five days per week, totaling a weekly minimum of fifty-five hours. J.A. 54. The employees are paid on commission and receive no overtime pay. J.A. 55–56.

2. In 2012, the service advisors filed suit in federal district court, alleging various violations of the FLSA and state law. Count One, at issue here, alleged that petitioner (the dealership) violated the FLSA by failing to pay them time-and-a-half for hours worked beyond forty per week. J.A. 57–59. The dealership moved to dismiss, arguing that service advisors are exempt from the FLSA's overtime protections under § 213(b)(10)(A). The district court acknowledged that "the statutory language of § 213(b)(10)(A) does not expressly exempt Service Advisors." Pet. App. 81. But, asserting that service advisors are "functionally equivalent to salesmen and mechanics," the district court extended the exemption to service advisors as well. Pet. App. 83. After dis-

missing the other FLSA claims, the court declined to exercise supplemental jurisdiction over the remaining state-law claims. Pet. App. 83–85.

3. The court of appeals unanimously reversed the dismissal of the FLSA overtime claim and supplemental state-law claims. Applying *Chevron* deference, the court upheld the agency's reading of the statutory text as reasonable. Pet. App. 73 (citing *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 844 (1984)). As the court explained, "[a] natural reading of the text strongly suggests that Congress did not intend that both verb clauses would apply to all three subjects." Pet. App. 69. "It is hard to imagine, in ordinary speech, [a] 'salesman . . . primarily engaged in . . . servicing automobiles.'" *Id.*

3. This Court granted certiorari, vacated, and remanded. Holding that DOL's bare explanation of its 2011 rule rendered it "procedurally defective," this Court did not reach the question presented here. Pet. App. 40. Instead of deciding the merits, this Court "remand[ed] for the Court of Appeals to interpret the statute in the first instance" without *Chevron* deference. Pet. App. 44–45.

Concurring, Justice Ginsburg (joined by Justice Sotomayor) suggested that service advisors, unlike partsmen, do not service automobiles. Pet. App. 46 n.1. The concurrence also "doubt[ed] that reliance interests would pose an insurmountable obstacle," noting other FLSA provisions that exempt certain commissioned employees and guard against retroactive liability. Pet. App. 47–48 n.2. Only the dissent would have held that "a service advisor is a 'salesman'" exempt from the FLSA's overtime-pay protec-

tions. Pet. App. 50–51, 54 (Thomas, J., joined by Alito, J., dissenting).

4. On remand, the court of appeals construed the exemption *de novo* and first established the "'ordinary, contemporary, common meaning' of the [statutory] term[s] at the time Congress added the relevant clause." Pet App. 8 (quoting *Perrin* v. *United States*, 444 U.S. 37, 42 (1979), and citing *Taniguchi* v. *Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566–68 (2012)). In sections A.1 and A.2 of its opinion, the court closely parsed the statutory phrases "any salesman, partsman, or mechanic" and "primarily engaged in selling or servicing automobiles." Pet. App. 8–16. The court held that "the most natural reading of the statute" does not exempt service advisors, and that the dealership's "interpretation represents a considerable stretch of the ordinary meaning of the statute's words." Pet. App. 8, 13. It further stated that its "interpretive task could end here, with the words of the statute as commonly understood" at the time. Pet. App. 16.

Only *after* establishing "the most natural reading of the statute" did the court refer to other "literal," *i.e.*, possible, interpretations of the statutory terms to confirm or disconfirm its reading. Pet. App. 8, 16; *see also id.* at 13 (quoting *Taniguchi*, 566 U.S. at 568 ("[T]he fact '[t]hat a definition is broad enough to encompass one sense of a word does not establish that the word is *ordinarily* understood in that sense") (emphasis in court of appeals' opinion)).

While noting that this Court's "longstanding" canon of construing § 213 exemptions narrowly provided additional support, the court explained that it

"would [have] reach[ed] the same ultimate holding . . . even if the rule of narrow construction did not apply." Pet. App. 21 n.14. Likewise, the court referred to the legislative history only after interpreting the text and only as a further validation of its textual analysis. Pet. App. 16, 21. And while the court construed the statute *de novo*, in the alternative it would have deferred to DOL's "present reasoning [as] persuasive and thorough," under *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944). Pet. App. 7 n.3.

SUMMARY OF ARGUMENT

The salesman/partsman/mechanic exemption exempts salesmen primarily engaged in selling automobiles and partsmen and mechanics primarily engaged in servicing automobiles. It does not exempt service advisors, who advise and consult, rather than selling or servicing automobiles. Indeed, petitioner itself concedes (Br. 30) that service advisors do not "go under the hood to service cars." Petitioner's effort (Br. 42) to expand the statutory terms to sweep in jobs "integral to the servicing process" would not only violate the statutory text, structure, history, and policies, but also scramble settled pay practices for dozens of occupations at dealerships.

I. The text of the statute ("any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles") does not exempt service advisors. **A.** Service advisors are not *salesmen*, but serve as liaisons between customers and mechanics. Congress chose to exempt three and only three specific occupations, even though service advisors were a recognized occupation at the time of enactment, of

amendment, and now. Thus, the *expressio unius* canon forbids adding a fourth occupation or expanding "salesman" to embrace other occupations, as petitioner seeks to do.

B. Service advisors do not *service* automobiles because they do not perform automotive manual labor. Selling services is not the same as servicing. "*Engaged in*" means to involve oneself in or become employed in regularly; if anything, it narrows—rather than expands—the ordinary meaning of "servicing." And the elastic words "integral to the process" or the like injected by petitioner (Br. 13, 26, 42) appear nowhere in the statute.

C. Service advisors' *primary* duty is to advise and serve as liaisons, not to sell automobiles or service them. Any occasional selling or servicing is incidental to their primary job of customer relations. Indeed, a "salesman" primarily engaged in "servicing" is a contradiction in terms; if an employee is primarily engaged in servicing, that means he or she is *not* a salesman.

D. Service advisors do not sell *automobiles*. And they do not service automobiles, but rather service customers.

E. Thus, service advisors do not satisfy *any* of the statutory elements of the exemption. Even if there were doubt about one or another of those elements, however, there is no natural reading of the statutory requirement as a whole—"any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles"—that would apply to service advisors.

II.A. The subject "salesman" naturally pairs only with "selling," not "servicing." As their shared etymology confirms, the job of a salesman is to sell, not service. And it is perfectly natural for certain nouns to pair only with certain verbs, not others, according to the context. This pattern of distributive phrasing is recognized by Scalia & Garner and an opinion of this Court by Chief Justice Marshall. More than one hundred federal statutes appended to this brief use such distributive phrasing.

B. The structure of the 1974 FLSA Amendments (as well as the section-by-section analysis) confirms that "salesman" pairs with "selling," just as "partsman" and "mechanic" pair with 'servicing."

C. The statute's exemption of "partsm[e]n" does not implicitly open the door to exempting service advisors as well. Partsmen, unlike service advisors, are expressly named in the exemption. They have often worked as a mechanic's right-hand man or woman by customizing and grinding down parts, measuring parts with specialized tools, and handing parts to mechanics over a counter or in the service bay. Congress's express intent to cover "partsmen" may support an understanding of "servicing automobiles" that includes those who work closely with mechanics on and with a car's parts as well as the car itself. But that provides no justification to torture "servicing" to include white-collar, non-servicing occupations like service advisors. Congress showed no particular concern with service advisors. Nothing in the exemption indicates that Congress specifically wanted to exempt them.

III.A. Congress listed three and only three occupations at dealerships because employees in those occupations had to work irregular hours, often off-site, making it hard to track hours and standardize pay. Service advisors, by contrast, work regular and long shifts on-site.

B. A separate statutory exemption for commission-based employees, and the Portal-to-Portal Act defense, allay petitioner's concerns about reliance and disrupting the dealership industry. The bigger danger is that petitioner's amorphous, novel theories for treating "the salesforce" and "the service staff" as "two *fully exempt* categories" would greatly disrupt the accepted nonexempt status of numerous occupations at dealerships and destabilize employment relationships. Pet. Br. 34 (emphasis in original).

ARGUMENT

I. THE TEXT OF THE FLSA'S OVERTIME EXEMPTION FOR AUTOMOBILE DEALERSHIP SALESMEN, PARTSMEN, AND MECHANICS DOES NOT EXEMPT SERVICE ADVISORS

Petitioner's argument distorts the text of the statute. To shoehorn service advisors into the salesman/partsman/mechanic exemption, petitioner asserts that they are (1) salesmen who are (2) primarily (3) engaged in (4) servicing (5) automobiles. Service advisors do not satisfy any of these five textual requirements, let alone all five. Each term independently narrows the scope of the exemption. But petitioner would collapse the subject, adverb, object, and two distinct verbs into one, and re-

place "servicing" with "integral to the servicing process." Br. 42; *accord id.* at 13, 26. Even if service advisors occasionally or incidentally sell services, that would not make them "salesmen"; it would not qualify as "servicing," let alone "engaged in . . . servicing"; it would not be what they "primarily" do; and it would not qualify as selling or servicing "automobiles."

A. The Subjects of the Exemption Are Only "Any Salesman, Partsman, or Mechanic," Not Service Advisors

1. *Expressio Unius: Congress Exempted Only Three Specific Occupations, Not Service Advisors and Not Whole Departments.* In 1966 and again in 1974, Congress rejected its 1961 approach of a blanket exemption for entire dealerships. Nor, contrary to petitioner's assertion, did it create "*fully exempt* categories" for "the salesforce" and "the service staff." *Contra* Pet. Br. 34 (emphasis in original); *see also id.* at 8, 53, 54 (inventing categories of "[d]ealerships' core sales and service employees").

Dealership sales and service departments may comprise numerous occupations. Machinists' Amicus Br. 18–33. As the court of appeals noted, in 1966 the Department of Labor listed at least a dozen occupations in dealerships, but Congress chose to exempt only three of them (shown in bold below):

- Automobile body repairmen
- **Automobile mechanics**
- Automobile painters
- **Automobile parts countermen**

- **Automobile salesmen**
- Automobile service advisors
- Automobile upholsterers
- Bookkeeping workers
- Cashiers
- Janitors
- Purchasing agents
- Shipping and receiving clerks

Pet. App. 9 (quoting U.S. Dep't of Labor, *Occupational Outlook Handbook*, Bulletin No. 1450, at XIII–XVIII (table of contents) (1966–67 ed.)) (bold emphases in opinion below) [*1966 Occupational Outlook Handbook*]. Three and only three occupations are exempt: salesmen, partsmen, and mechanics. Service advisors were a known, listed occupation, but Congress chose not to exempt them. The statute operates at the level of specific occupations, not general categories or departments.

Given the text's specificity in exempting particular occupations, the *expressio unius* canon applies with full force. "'Where Congress explicitly enumerates certain exceptions . . . additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.'" *TRW Inc.* v. *Andrews*, 534 U.S. 19, 28–29 (2001) (quoting *Andrus* v. *Glover Constr. Co.*, 446 U.S. 608, 616–17 (1980)).

By contrast, petitioner's reading of the statute turns the *expressio unius* canon on its head. Instead of respecting Congress's considered choice to itemize specific occupations, petitioner treats the statute as

also exempting jobs that are neither fish nor fowl but "hybrid" or "'functionally similar'" to those three occupations. Pet. Br. 10, 15, 34 (quoting *Brennan* v. *Deel Motors*, 475 F.2d 1095, 1097 (5th Cir. 1973)). Congress rejected that amorphous, analogical approach in favor of three carefully drawn occupations delimited in the statute.

2. *Service Advisors Are Not Salesmen.* To get around Congress's omission of service advisors from the statutory text, petitioner seeks to shoehorn them into a distinct occupation, "salesman." But "salesman" is limited to an employee whose job it is to complete sales transactions—to make sales. By contrast, the fundamental job of a service advisor is to advise and to transmit information, not to sell.

The amicus brief filed by the International Association of Machinists and Aerospace Workers, which represents many employees in the automotive industry, collects data about what service advisors do. The brief draws on scores of NLRB opinions that have uniformly declined to equate service advisors with salesmen. As the job title suggests, service advisors serve customers by advising them. Machinists' Amicus Br. 10–12. Their role is "customer service," as a "liaison" or "communications link" between customers and the service department. *Id.* at 9, 10, 15. Their "primary duties" are to greet customers, listen to and record their repair needs, share that information with the service department, and keep customers apprised of repair updates. *Id.* at 10–11, 15; *see* J.A. 55.

This Court has made clear that the employer has the burden of proving that FLSA exemptions apply.

See Idaho Sheet Metal Works, Inc. v. *Wirtz*, 383 U.S. 190, 209 (1966). Petitioner cannot carry that burden. In claiming that service advisors are "unquestionably," "plainly" salesmen, petitioner (Br. 3, 10, 21, 25, 26) cites only this Court's first decision in this case, in which the Court briefly suggested that they "sell services," but did not hold that they are "salesmen." Pet. Br. 25–26, 37–38 (citing Pet. App. 32, 44). Contrary to petitioner's claim, however, "employees who sell services" incidentally or on occasion are not *ipso facto* "salesmen." It is telling that, to claim that service advisors are "salesmen," petitioner is forced to rely upon the *dissent*. *Id.* at 38. The many NLRB and industry authorities collected in the Machinists' brief are to the contrary.

True, service advisors may sometimes "solicit and suggest" orders for services, including for a "supplemental service" such as preventative maintenance. J.A. 54–55. But that arguable "sales component" is not enough to make their job that of a "salesman." Machinists' Amicus Br. 14–15. A car-rental clerk solicits customers to buy rental car insurance, a dental hygienist may suggest a tooth-whitening procedure, and a flight attendant may ask passengers if they want to buy food or alcoholic drinks, but that does not make any of them a salesman.

The statute exempts only "*salesmen* . . . primarily engaged in selling," not others who may sell. By collapsing the subject "salesman" into the gerund "selling," petitioner would render the subject "salesman" surplusage. Petitioner effectively reads the statute as if it exempted "anyone who is primarily engaged in selling or servicing automobiles" at an automobile

dealership. Eliding the subject violates "'a cardinal principle of statutory construction,'" the canon against surplusage. *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001) (quoting *Williams* v. *Taylor*, 529 U.S. 362, 404 (2000)). "It is our duty 'to give effect, if possible, to every clause and word of a statute.'" *Id.* (quoting *United States* v. *Menasche*, 348 U.S. 528, 538–39 (1955)). The subject occupations ("salesman, partsman, or mechanic") independently limit the scope of the exemption, over and above the verb phrase. Even if service advisors occasionally or incidentally sell, that does not suffice to make them salesmen.

3. *The FLSA Canon Reinforces the Expressio Unius Inference.* The *expressio unius* inference is especially strong here because Congress legislated against the backdrop of this Court's "well settled" canon of construing exemptions to the FLSA "narrowly." *Mitchell* v. *Ky. Fin. Co.*, 359 U.S. 290, 295 (1959) (Harlan, J.). That canon is an instance of this Court's general practice of "construe[ing] exceptions narrowly" so as not to swallow rules. *E.g.*, *Milner* v. *Dep't of Navy*, 562 U.S. 562, 565 (2011) (FOIA exemptions); *Chickasaw Nation* v. *United States*, 534 U.S. 84, 95 (2001) (tax exemptions); *Kawaauhau* v. *Geiger*, 523 U.S. 57, 62 (1998) (exceptions to discharge in bankruptcy).

Congress was aware of this settled canon and enacted the 1966 and 1974 FLSA Amendments against this backdrop. Discussing what became the 1974 FLSA Amendments, the House floor manager of the 1966 and 1974 Amendments explained that the exemptions for "salesmen, partsmen, and mechanics"

would "be strictly interpreted" by courts. *Amendment to Exempt Employees of Boat Sales Establishments: Hearing Before the Gen. Subcomm. on Labor of the H. Comm. on Educ. and Labor*, 90th Cong. 5 (1967) (Rep. Dent). *See generally* Nat'l Emp't Lawyers Ass'n Amicus Br.

4. *The Expressio Unius Canon Also Precludes Expanding Commission-Pay Exemptions by Analogy.* Nor does commission pay convert a service advisor into a salesman. *Contra* Pet. Br. 6–7, 22, 32–34. The dealership exemption nowhere mentions commissions or other methods of pay. Yet petitioner analogizes the dealership exemption to other statutory provisions that expressly exempt some (but certainly not all) employees paid on commission, as well as "outside salesm[e]n." Br. 6–7, 22, 32 (citing 29 U.S.C. §§ 207(*i*), 213(a)(1)). The *expressio unius* canon precludes expanding such carefully limited exemptions beyond their terms. Petitioner's analogy would subvert each provision's distinctive limits and requirements.

Commission pay does not make an employee a salesman or exempt from overtime pay. As petitioner concedes, many service advisors are paid "a combination of salary or hourly wages and commissions." Pet. Br. 14 n.4. Many non-salesmen are sometimes paid on commission, including bookers, dispatchers, warranty clerks, and lube technicians, yet are not exempt. Machinists' Amicus Br. 15-16. Conversely, many exempt employees are paid salaries or hourly wages, or by some combination of measures. *Id.* at 16; *1966 Occupational Outlook Handbook* 314, 477, 480; *More About Compensating Salesmen*, Imple-

ment & Tractor, Feb. 7, 1974, at 10, 11, 49. Many kinds of commission-based employees are entitled to overtime pay, including some salesmen. Law Professors' Amicus Br. 11–14. Moreover, calculating overtime on commissions is a straightforward task, handled by personnel software and based on records that employers are already required to keep. *Id.* at 14–17. None of this has anything to do with the question presented here.

5. *The Adjective "Any" Does Not Expand the Terms It Modifies.* Petitioner relies (Br. 3, 21, 30–31) on the word "any" to shoehorn service advisors into "salesm[e]n . . . primarily engaged in selling or servicing automobiles." But the word "any" "do[es] not broaden the ordinary meaning of the" words it modifies. *BP Am. Prod. Co.* v. *Burton*, 549 U.S. 84, 93 (2006). Even when "any" is used as a "catchall . . . [it does] not . . . define what it catches." *Flora* v. *United States*, 362 U.S. 145, 149 (1960).

The effect of the term "any" depends on context. For instance, if a statute refers to "any court," one need not read it to include foreign courts, because Congress is presumed to legislate only domestically. *Small* v. *United States*, 544 U.S. 385, 388–89 (2005). Likewise, even if a pet-friendly landlord allowed tenants to bring "any cat" into their apartments, no one would dispute the landlord's right to turn away a Bengal tiger. In context, only housecats are permitted, not all felines. Here too, the exemption reaches only those whose occupation is "*salesman* . . . primarily engaged in selling or servicing automobiles," not everyone who may occasionally or incidentally sell in the course of other job duties.

B. The Verb Phrase "Engaged In Selling Or Servicing" Does Not Expand "Servicing" Beyond Performing Automotive Manual Labor

1. *Service Advisors Do Not Service Automobiles Because They Do Not Perform Automotive Manual Labor.* "Service advisors are uniformly described as having neither the skills nor tools" needed "'to perform repair or mechanical work.'" Machinists' Amicus Br. 4, 13 (quoting NLRB decision). They do not work with their hands, but write up repair estimates and work orders before the servicing begins and act as liaisons later. Service advisors are not engaged, let alone "primarily engaged," in "servicing automobiles."

"Servicing" means automotive manual labor, quintessentially maintenance or repairs. Contemporaneous dictionaries list performing mechanical work as the first definition of the transitive verb "service," and illustrate it with the example of repairing or maintaining an automobile: "To perform services of maintenance, supply, repair, installation, distribution, etc. for or upon; as, to *service* a car, a radio set, a ship, a territory." 4 *Webster's New International Dictionary of the English Language* 2288 (2d ed. 1956) [*Webster's Second*]; *accord The Random House Dictionary of the English Language* 1304 (1st ed. 1966) [*Random House Dictionary*]; *The American Heritage Dictionary of the English Language* 1185 (1st ed. 1969) [*American Heritage Dictionary*]; *Webster's Third New International Dictionary* 2075 (3d ed. 1981). In the *American Heritage* (at XLVII) and *Random House* (at xxix) dictionaries, listing a definition first conveys "the word's primary meaning."

Muscarello v. *United States*, 524 U.S. 125, 128 (1998). And the *Oxford English Dictionary*'s first definition of "servicing" is "[t]he action of maintaining or repairing a motor vehicle." 15 *Oxford English Dictionary* 39 (2d ed. 1989).

Congress has repeatedly used the term "servicing" in the United States Code to mean automotive manual labor, such as maintenance and repairs. In a statute regulating the Senate garage, for example, "the term 'servicing' includes, with respect to an official motor vehicle, the washing and fueling of such vehicle, the checking of its tires and battery, and checking and adding oil." 2 U.S.C. § 2025(b). Another statute limits ozone-depleting emissions by regulating who may "repair[] or servic[e]" vehicles' air conditioners: "[N]o person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner . . . unless such person has been properly trained and certified." 42 U.S.C. § 7671h(c). If petitioner were correct that service advisors were engaged in servicing automobiles, they would be forbidden to schedule such air-conditioning work unless they had been "properly trained and certified."

Even if service advisors occasionally take a "look[] under the hood," Pet. Br. 42, they lack the skills and tools to diagnose and repair problems. Machinists' Amicus Br. 12–14. While they may "evaluate the service and/or repair needs of the vehicle owner *in light of complaints given them by these vehicle owners*," they do not service the vehicle or perform any mechanical operations on it. J.A. 55 (emphasis added). They may relay diagnoses made

by mechanics. Machinists' Amicus Br. 11; *see* J.A. 55, ¶ 17. But it is the mechanic, not the service advisor, who repairs automobiles, just as it is the doctor, not the triage nurse, who treats illnesses.

In this case, Congress used the term "servicing" in its ordinary sense, to refer to the activity of employees who maintain or repair automobiles. Because service advisors do neither, they fall outside the statutory exemption.

2. *Selling Services Is Not the Same as Servicing.* Petitioner seeks to stretch the plain meaning of "servicing" by equating it with "selling services." Br. 29; *accord id.* at 28, 34. Petitioner's view is that "selling" is a way that one can "engage in . . . servicing." But even if service advisors could be regarded as selling services, that is not the same as "servicing." There is a fundamental difference between selling someone else's service and performing the service oneself. A middleman or woman often sells the right to a service without performing it himself or herself. Travel agents sell guided tours but do not guide the tours themselves. American Automobile Association (AAA) clerks sell emergency roadside assistance plans but do not change flat tires or charge dead batteries. Indeed, the divide between selling a service and performing that service is a premise of the sharing economy. Uber and Lyft, for example, sell driving services (like taxis) but neither own nor drive automobiles. https://www.uber.com; https://www.lyft.com.

Thus, salesmen who (unlike service advisors) do sell automobile-related services are not exempt, because they do not perform the services they sell. Underbody-coating salesmen sell a service, the

spraying on of underbody coatings, yet they do not perform that service themselves, and petitioner thus concedes that they are not exempt. 15–415 Cert. Reply Br. 7 n.2. Likewise, salesmen who sell warranties are selling plans to have mechanics service automobiles, yet petitioner concedes that they are not exempt either. *Id.* Courts agree. *See, e.g.*, *Chao* v. *Rocky's Auto, Inc.*, No. 01–1318, 2003 WL 1958020, at *1, *4–5 (10th Cir. Apr. 25, 2003) (unpublished) (declining to exempt finance managers and finance contractors as salesmen because they sell extended warranties, not automobiles); *Gieg* v. *Howarth*, 244 F.3d 775, 776–77 (9th Cir. 2001) (same, for finance writers, because they sell financing, insurance, and warranties, not automobiles). Service advisors, even if assumed to be "selling," are no different.

3. *"Or" ≠ "The"; Petitioner Seeks to Transmute the Verb "Or Servicing" Into the Direct Object "The Servicing of Automobiles."* Petitioner's arguments rest on conflating words that sound alike but are different parts of speech, with different meanings: transitive verbs such as "service" or "servicing," and nouns such as "services" or "the servicing of automobiles." "Selling *or* servicing," the actual statutory language, uses a coordinate conjunction "or" to link two discrete gerunds that function as transitive verbs. But petitioner's alchemy rewrites the text into "selling *the* servicing." Petitioner inserts the definite article "the" in trying to turn "servicing" into a noun, the direct object of "selling."

Thus, petitioner asserts, without supporting authority, that "[i]t would be nonsensical to suggest that

an individual primarily engaged in selling the servicing of automobiles is engaged in *neither* selling *nor* servicing automobiles." Br. 29; *accord* Br. 21–22. It is certainly not "nonsensical" to suggest that service advisors are not primarily engaged in *selling* automobiles; no one (including petitioner) claims that they are. So petitioner's claim reduces to the bald assertion that it is "nonsensical" to suggest that service advisors are not primarily engaged in *servicing* automobiles. Far from being "nonsensical," the sources cited above for the ordinary usage of "servicing automobiles" establish that service advisors are not so engaged. What petitioner needs—and fails to provide—are reasons and support for its claim, not labels like "nonsensical" to apply to a well-supported opposing view.

Petitioner's paraphrase of the statute ("an individual primarily engaged in selling the servicing of automobiles") reflects its confusion. In petitioner's paraphrase, "the servicing of automobiles" is an awkward way of phrasing "automobile services." In petitioner's paraphrase, the person selling the services need not do the servicing. But in the actual statutory exemption ("salesman . . . primarily engaged in . . . servicing"), the subject of the verb, the "salesman," must perform the "selling" or "servicing" upon the direct object "automobiles." Even if a salesman could be seen as selling automobile services performed by a mechanic, the salesman is not the one who is "servicing" the automobiles.

This Court has rejected similar efforts to conflate the two disjunctive categories on either side of the conjunction "or." For example, this Court has

held that the noun "business," in the phrase "business or property," cannot be understood to modify "property" as "business property." *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979). "Congress' use of the word 'or' makes plain that 'business' was not intended to modify 'property,' nor was 'property' intended to modify 'business.'" *Id.*; *see also Garcia* v. *United States*, 469 U.S. 70, 73 (1984) (explaining that in the phrase "of any mail matter or of any money or other property," the word "money" did not mean "postal money" or "money in the custody of postal employees").

4. *"Engaged in" Does Not Expand "Servicing" Beyond Performing Automotive Manual Labor.* Seeking to avoid the ordinary limits on "servicing," petitioner seizes on the phrase "engaged in." That phrase, it claims, expands the verb phrase "beyond just those dealership employees who personally go under the hood to service cars or personally go out on the lot to sell them." Pet. Br. 30. But far from expanding "servicing," the phrase "engaged in . . . servicing" requires that one actually and continually perform automotive manual labor.

To "engage" is "to involve oneself or become occupied; participate: *engage in conversation*." *American Heritage Dictionary* 433 (first intransitive definition). "It imports more than a single act or transaction or an occasional participation." *Black's Law Dictionary* 622 (rev. 4th ed. 1968). That requires regularly performing the action, not just assisting with its performance by others. To engage in conversation is actually to keep speaking, not merely to encourage as a bystander. To engage in swordplay is

actually to thrust and parry, not just to serve as a second for a duel. When the United States supported the United Kingdom with the Lend-Lease arrangement in 1941, it was as yet only Britain, not America, that was engaged in combat.

Petitioner thus errs in equating "engaged in . . . servicing" with "integral to the process of servicing vehicles at the dealership." Br. 3; *accord id.* at 13, 26, 28, 42. No form of the word "integral" or "process" appears anywhere in this subsection. Yet Congress knew how to use such expansive modifiers and chose to use them elsewhere in the same statute, but not here. For instance, Congress exempted from overtime pay performing "services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco." 29 U.S.C. § 207(m)(1)(a); *accord id.* § 213(h)(1) (exempting various "services necessary and incidental" to ginning, receiving, handling, and storing cotton as well as to processing sugar).

Absent such statutory language, petitioner errs in injecting the elastic phrase "integral to the process of" into the statutory text. Its only authority states exactly the opposite of what petitioner says. Petitioner selectively quotes 29 U.S.C. § 203(j) as if it created a dichotomy between "[p]roduced" and "engaged in the production of goods," treating the latter as broader. Br. 30. The full subsection, however, treats "produced" as synonymous with "engaged in the production of goods." What broadens that definition is the phrase italicized below that petitioner does *not* quote:

> (j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee *shall be deemed* to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof.

29 U.S.C. § 203(j) (emphasis added). As this Court has recognized, "shall be 'deemed' [is] *a formulation commonly employed to direct courts to make counterfactual assumptions.*" *Levin* v. *United States*, 568 U.S. 503, 514–15 (2013) (emphasis added). It is the "deem[ing]," not "engaged in," that broadens the definition by including those whom Congress recognized had *not* "[p]roduced" or "engaged in the production of goods" but nevertheless should be "deemed" to have done so.

This Court's precedents have interpreted that very subsection § 203(j) accordingly, as distinguishing "engaged in" from any "closely related process or occupation." This Court has contrasted the narrower "production in the normal sense" ("engaged in the production of goods") with the broader "production in the special sense defined in § [20]3(j)" ("deemed" to include "a host of incidental activities which are necessary to that process"). *Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U.S. 755, 759–60 (1949); *accord Roland Elec. Co.* v. *Walling*, 326 U.S. 657, 663–

64 (1946); *Warren-Bradshaw Drilling Co.* v. *Hall*, 317 U.S. 88, 91 (1942).

In short, "engaged in" means actually doing the action regularly. It does not expand the ordinary meaning of "servicing," but narrows it by importing the idea of regularity. When Congress wants to expand definitions, it adds words such as "process," "necessary," or "incidental," or it uses the counterfactual "deeming" construction. It has done neither here.

C. The Adverb "Primarily" Narrows the Verb Phrase, Limiting It to Employees Whose Essential or Chief Task Is Either Selling Automobiles or Servicing Them, Not Advising Customers

1. *"Primarily" Means "Chiefly."* Congress further narrowed the FLSA exemption only to employees who are "*primarily* engaged in selling or servicing automobiles" (emphasis added). "Primarily" means "essentially; mostly; chiefly; principally." *Random House Dictionary* 1142.

As their title implies, service advisors' "essential" or "chief" responsibility is neither selling automobiles nor servicing them. Rather, it is advising customers and acting as a liaison between customers and the service department. "Although there is undoubtedly a sales component, no cases describe the job duties of service advisors with sales as the primary responsibility." Machinists' Amicus Br. 15. And even if a few service advisors occasionally replace a light bulb or wiper blade, such "minor" tasks (for which the customer is ordinarily not charged) are "'incidental to their primary duties of greeting

customers and preparing the R[epair] O[rder].'" *Id.* at 13–14 (quoting NLRB decision).

Moreover, petitioner's contention that service advisors are "salesmen . . . primarily engaged in . . . servicing automobiles" is an oxymoron. Br. 1, 3, 15, 20, 23, 25, 25, 26, 27, 29, 31, 34. By definition, a salesman must be primarily engaged in selling. As the court of appeals recognized, a person primarily engaged in *servicing* is by definition not a *salesman*. Pet. App. 17.

2. *"Actually" Is Implicit.* Petitioner repeatedly attacks the court of appeals' use of the adverb "actually" or "personally." Br. 3, 19, 22, 23, 39, 40 & n.12, 41, 42, 46. The court of appeals used "personally" only once, as a synonym for "primarily" and "actually." Pet. App. 13. And the court used both terms to contrast with "constructively," "figuratively," or "through an intermediary." Indeed, "actually" or "personally" is implicit in statutory requirements, unless Congress specifies otherwise. *E.g.*, *Honeycutt* v. *United States*, 137 S. Ct. 1626, 1635 (2017) (limiting statutory forfeiture "to property the defendant himself actually acquired" and "personally benefit[ted] from," though statute contained neither adverb). If Congress means to broaden a provision beyond "actually," it must spell out "constructively" or use "deemed" or the like. *See Levin*, 568 U.S. at 514. Congress did not do so here.

D. The Objects of the Verb Phrase Include Only "Automobiles, Trucks, or Farm Implements," Not Automobile Services

1. *Service Advisors Do Not Sell Automobiles.* While petitioner claims that service advisors sell *services*, it does not and cannot contend that they sell *automobiles*. Other dealership salesmen likewise make sales related to automobiles. There are financing salesmen, lease salesmen, insurance salesmen, and underbody-coating salesmen. Indeed, financing, insurance, and lease salesmen are closely related to the ultimate sale of automobiles, since their work may facilitate or lead to a sale. But as petitioner conceded, "salesmen who sell warranties, underbody coatings, or insurance are not primarily engaged in either selling automobiles or servicing them." 15–415 Cert. Reply Br. 7 n.2. Likewise, petitioner's amicus concedes that lease salesmen "**are not** *salesmen* under [§ 213(b)(10)(A)], since they are not selling vehicles to ultimate purchasers." Nat'l Auto Dealers Ass'n, *A Dealer Guide to the Fair Labor Standards and Equal Pay Acts* 12 (2005) (emphases in original); *see also* pp. 14–16, *supra*. Since service advisors likewise do not sell automobiles, they too are not exempt.

2. *Service Advisors Do Not Service Automobiles.* Congress did not list "services" as a direct object of "selling." To get around that omission, petitioner seeks to shoehorn "selling services" into the other gerund, "servicing." But the statute requires the subject of the exemption to service *automobiles*, and service advisors do not do so. At most, they service *customers*, and customers are not enumerated as a di-

rect object of "servicing." As the Machinists' brief explains, a service advisor holds a customer-relations position, as liaison to the mechanics who service the automobiles. Machinists' Amicus Br. 9–12. The service advisor advises the customer, not the mechanic, informing the customer of the work's status and obtaining her consent for repair work by the mechanic if needed. *Id.* Service advisors work in the front of the dealership, wearing ties and conferring with customers. *See* App., *infra*, C2 (photograph of service advisor). They do not work in the shop and do not repair automobiles.

E. The Exemption as a Whole Does Not Cover Service Advisors

Petitioner has the burden to show that the exemption applies. *Idaho Sheet Metal Works*, 383 U.S. at 209. Yet, for all of the reasons above, petitioner cannot show that *any* of the five requirements of the statute apply to a service advisor: that he or she is "any [1] salesman, . . . [2] primarily [3] engaged in [4] . . . servicing [5] automobiles." And beyond those separate points, a cardinal rule of statutory construction is that statutes must be read as a whole, such that even a plausible contrary reading of one term cannot override the remaining terms. *See United States* v. *Morton*, 467 U.S. 822, 828, 836 (1984). Even if it were thought that service advisors might satisfy one or another of those five statutory requirements, Congress could not have intended that each of them be twisted to accommodate an occupation—service advisor—that was well-known at the time but that Congress omitted from the statutory exemption.

II. THE STRUCTURE AND ENACTMENT HISTORY OF THE EXEMPTION CONFIRM THAT IT DOES NOT COVER SERVICE ADVISORS

A. The Subject "Salesman" Naturally Pairs Only with the Gerund "Selling," Not "Servicing"

The exemption applies to "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements." 29 U.S.C. § 213(b)(10)(A). According to both standard English usage and canons of statutory construction, the first subject "salesman" goes with the first gerund "selling," just as the latter subjects "partsman" and "mechanic" go with the latter gerund "servicing."

1. *Salesmen Sell, Not Service.* The statutory term "salesman" naturally fits with the first gerund "selling," not "servicing." In ordinary English, a salesman is one whose job is selling. The nouns "salesman" and "sale" and the transitive verb "sell" share the same etymological root, **saljan*. 14 *Oxford English Dictionary* 391, 388, 394; *Webster's Second* 2204, 2203, 2272. By contrast, "salesman" has no etymological or semantic connection to "service" or "servicing." This Court has relied on the etymological linkage between nouns and verbs, holding that Congress's use of the verb "carry" signaled its intent to reach the etymologically related nouns "car" and "cart." *Muscarello*, 524 U.S. at 128.

Empirical data on English usage confirm that "salesman" does not fit with "servicing" automobiles. In the entire Google Books database of more than 24 million books, the phrase "salesman servicing"

appears only about 150 times, almost always in the context of salesmen servicing sales accounts or territories. https://books.google.com. Only *one* example relates to servicing automobiles or similar machines: a book reporting a case that denied worker's compensation to a gas-station attendant who was injured when fixing an automobile on the side for his own profit, because servicing automobiles was *not* part of his job of selling gasoline. That is the exception that proves the rule. *Dunn* v. *Univ. of Rochester*, 194 N.E. 856, 856–57 (N.Y. 1935) (per curiam), *summarized in* N.Y. State, *Workmen's Compensation Law and Industrial Board Rules* 17 (1936).

This remarkable absence of usage refutes petitioner's strained interpretation. Any ordinary English speaker understands that "salesm[e]n" must primarily engage in "selling," not "servicing automobiles," just as "mechanic[s]" engage in "servicing," not "selling." As the court of appeals noted, it is strange to speak of a "salesman . . . primarily engaged in . . . servicing," Pet. App. 17; an employee "primarily engaged in . . . servicing" is not a salesman at all, but a mechanic, partsman, lube technician, detailer, upholsterer, or the like.

2. *In English Usage, It Is Common For Certain Nouns to Pair Only with Certain Verbs but Not Others When the Context So Indicates.* There is no reason to force every subject in the statute to pair with every gerund. English speakers and writers frequently expect listeners and readers to infer which words pair with which. In fact, the preceding sentence is an example of this pattern: "speakers . . . frequently expect listeners . . . to infer" their mean-

ing, whereas "writers frequently expect . . . readers to infer" it.

Linguists call this pattern "distributive" (as opposed to "collective") phrasing: certain nouns (or other words) in a first list pair with certain verbs (or other words) in a second list. Etymological or semantic links among the corresponding words, like those between "salesman" and "selling," often make the distributive reading even clearer.

The distributive-phrasing canon is called *reddendo* (or *referendo*) *singula singulis*. It provides for "[a]ssigning or distributing separate things to separate persons, or separate words to separate subjects." *Black's Law Dictionary* 1467 (10th ed. 2014); *accord* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 214–16 (2012) (approving of canon but noting that modern drafting has made it less necessary); 1 Earl T. Crawford, *The Construction of Statutes: A General Discussion of Certain Foundational Subjects* § 194, at 332–34 (1940); Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* § 74, at 226–27 (2d ed. 1911).

Applying the canon depends on reading words most naturally in context: "Where a sentence contains several antecedents and several consequents, courts read them distributively and apply the words to the subjects which, *by context*, they seem most properly to relate." 2A Norman Singer et al., *Sutherland Statutes and Statutory Construction* § 47:26 (7th ed. Supp. Nov. 2016) (emphasis added).

a. *Chief Justice Marshall on Distributive Phrasing, Matching Three Terms with Two.* The *reddendo* canon dates back as far as the Marshall Court. After Maryland and Virginia ceded land to form the District of Columbia, Congress passed a statute retaining the body of law that had existed in each formerly separate part of the District. *United States* v. *Simms*, 5 U.S. (1 Cranch) 252, 253–54, 256 (1803). Maryland and Virginia had different procedures for gambling fines and forfeitures: indictment or information in Maryland, *see Baker* v. *State*, 2 H. & J. 5, 5, 1806 WL 247 (Md. 1806), or an action of debt for a statutory penalty in Virginia, *see Simms*, 5 U.S. at 252–54. A federal statute provided that "all fines, penalties and forfeitures accruing under the laws of the states of Maryland and Virginia, which by adoption have become the laws of this [D]istrict [of Columbia], shall be recovered with costs, by indictment or information in the name of the United States, or by action of debt in the name of the United States and of the informer." 5 U.S. at 254. The United States government brought a forfeiture action by indictment (the Maryland procedure) in Alexandria County (ceded by Virginia). While conceding that Virginia law did not authorize proceeding by indictment, the government argued that the statute established a "new remedy" allowing the government to proceed by indictment in Alexandria. *Id.* at 256.

Writing for the Court, Chief Justice Marshall rejected the government's argument that the statute's disjunctive phrasing authorized proceeding by indictment in Alexandria County. 5 U.S. at 258–59. Instead, applying the *reddendo* canon, the Court held that the statute authorized proceeding by in-

dictment only when state law would have authorized that State to proceed by indictment. *Id.* at 259. The Court rejected the argument that either State's laws could be enforced via any of the three modes of proceeding: "It can not be presumed that [C]ongress could have intended to use the words in the unlimited sense contended for." *Id.* at 258. Petitioner advocates just that "unlimited sense" in this case.

b. *Congress Frequently Enacts Statutes Using Distributive Phrasing.* Congress regularly follows this pattern in drafting statutes. More than a hundred federal statutory provisions follow this general distributive pattern. App., *infra*, B1–B39.

c. *First Words Often Go with First, and Last with Last.* The order of words in the statute often reinforces the *reddendo* inference. First often goes with first, as last often goes with last. In the dealership exemption, "salesman," the first noun, pairs with "selling," the first gerund. "Partsman" and "mechanic," the last two nouns, pair with "servicing," the last gerund. As the dozens of statutes appended to this brief show, Congress often follows this distributive pattern. App., *infra*, B20–B33.

Petitioner resists this reasoning because the exemption lists three subjects (salesmen, partsmen, and mechanics) but only two gerunds (selling and servicing), so the subjects and verbs do not correspond one-to-one. Br. 44. But the distributive inference still holds, because certain subjects naturally relate to certain verbs: "salesman" to "selling," "partsman" and "mechanic" to "servicing." The same type of phrasing was at issue in *Simms*, where the statute mentioned two states (Maryland and Virgin-

ia) but three modes of proceeding (indictment, information, or action of debt). The Court had no trouble applying the *reddendo* canon to pair Maryland with indictment and information, and Virginia with action of debt.

Similarly, there are more than fifty distributively phrased federal statutes in which the number of nouns differs from the number of verbs. App., *infra*, B1–B19. For instance, a statute permits "[a]ny *person*, livestock company, or **transportation corporation** engaged in ***breeding***, ***grazing***, ***driving***, or ***transporting*** livestock [to] construct reservoirs upon unoccupied [federal] public lands." 43 U.S.C. § 952 (emphases added to show the paired terms). The third subject, "transportation corporation," pairs only with the third and fourth gerunds, "driving" and "transporting," not "breeding" or "grazing." (Note also the use of "engaged in" to mean actually doing the activity, not just being part of a process connected to someone else's doing the activity.)

d. *Petitioner Invents a "Fundamental Grammatical Rule" That Does Not Exist.* Petitioner resists the canon more generally, positing an inverse canon that does not exist. It imagines "a fundamental rule of grammar that when a sentence has multiple disjunctive nouns and multiple disjunctive direct-object gerunds, each noun is linked to each gerund as long as that noun-gerund combination has a sensible meaning." Br. 26–27. Notably, petitioner has never cited *any* apposite authority setting forth such a "fundamental rule of grammar," and we can find none. Petitioner's two cases say only that courts should give independent meaning to each item in a

single list *A* or *B* so that neither item becomes surplusage. Br. 27. They say nothing about how one list of nouns *A*, *B*, or *C* must relate to a second list of gerunds *X* or *Y*. A distributive reading renders no word surplusage, but simply pairs each word with its appropriate referent. Petitioner's unsupported assertion is at odds with Singer, Scalia & Garner, Black, Crawford, *Black's Law Dictionary*, and Chief Justice Marshall's opinion in *Simms*. The authentic canon is *reddendo*, and it functions wherever the context indicates it is most appropriate.

e. *There Is No Reason to Limit Distributive Phrasing to Preventing Null Sets.* Petitioner next tries to limit distributive phrasing to cases "[w]here a particular theoretical combination of disjunctive nouns and gerunds produces a practical null set." Br. 44; *accord id.* ("non-existent categories"); *id.* at 43 (ruling out "practically non-existent noun-gerund combinations"). Once again, petitioner cites zero authority for its fabrication. Its *ipse dixit* is contradicted by examples from the United States Code, this Court's precedent, and common sense. Distributive phrasing depends not on impossibility, but on context.

Even where courts could force all the words to pair without creating null sets, they need not do so where the context indicates that a distributive reading makes more sense. For instance, a statute requires commercial drivers to get driver's licenses for "a *vehicle, machine, tractor,* trailer, or semitrailer *propelled* or drawn by mechanical power . . . ." 49 U.S.C. § 31301(12) (emphases added to show the paired terms). While one could imagine a vehicle

that is drawn, such as an automobile or motorcycle being towed or on a vehicle-transport trailer, it would not be covered by the statute. The commercial driver needs a driver's license only for the tow truck or tractor-trailer, not a separate license for the automobile or motorcycle being drawn.

Likewise, in *Simms*, there were two states (Maryland and Virginia) but three procedures (indictment, information, and action of debt). The Court could have authorized using the Maryland procedures of indictment or information in land ceded by Virginia; indeed, the government sought exactly that. But while it would have been *possible*, in context it made less sense to do so. 5 U.S. at 258 ("It can not be presumed that [C]ongress could have intended to use the words in the unlimited sense contended for.").

The same would be true if a sporting event awarded a prize to "any runner, long jumper, or high jumper for excelling in running or jumping." One could imagine awarding a prize to a high jumper for running quickly up to the jumping line. There is no logical, physical, or practical impossibility. And there are three subjects but only two gerunds. But forcing all three nouns to pair with both gerunds would make little sense, particularly given the etymological and semantic connections between "runner" and "running," and between "jumper" and "jumping." In context, it makes far more sense to read the rule distributively, rewarding runners for their running and *both* kinds of jumpers for their jumping, but not jumpers for running fast in the run-ups to their jumps.

f. *Petitioner's Ellipses Obscure the Issue.* Much of petitioner's argument relies on its use of ellipses. Petitioner repeatedly omits the other subjects, gerunds, and objects, quoting the statute as exempting some variant of "any salesman . . . primarily engaged in . . . servicing automobiles . . . ." *E.g.*, Br. 1, 15, 16, 20, 23, 25, 31, 34. If the entire provision exempted *only* "any salesman primarily engaged in servicing automobiles," with no other subjects, gerunds, or direct objects, one might strain to find some nonzero set of salesmen who service. But that is not what Congress wrote, and the exemption covers its intended type of salesmen—those who sell automobiles—without recourse to such artifice.

B. By Amending and Re-Enacting the Statutory Text in 1974, Congress Evinced Its Understanding That "Salesman" Does Not Pair with "Servicing"

1. *The Structure of the 1974 Amendment.* Though initially enacted in 1966, the dealership exemption was substantively amended and re-enacted in 1974. That is the text under review here. Petitioner is thus wrong to criticize reference to the 1974 FLSA Amendments as "post-enactment legislative history." Br. 23, 47. The structure of the 1974 statutory amendment reflects Congress's understanding that salesmen primarily engage in selling, not servicing. This later amendment "strongly suggests" the best interpretation of the statute. *Babbitt* v. *Sweet Home Chapter*, 515 U.S. 687, 700–01 (1995).

The original 1966 exemption, § 213(b)(10), had no subsections, but the 1974 amendment split the provision into two subsections. Subsection (A) retained

the existing exemption for salesmen, partsmen, and mechanics at automobile, truck, and farm-implement dealerships. Congress removed trailer and aircraft dealerships (and added boat dealerships) to a new subsection, limiting it to "any salesman primarily engaged in selling." To limit the new subsection (B) to salesmen, Congress omitted partsmen and mechanics, and the gerund "servicing" went with them. *Compare* App., *infra*, A1 (1966 version), *with* App., *infra*, A2 (1974 version).

The omission of "servicing" in the new salesmen-only subsection is telling. "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U.S. 16, 23 (1983). Congress's choice to pair the noun "salesman" with the gerund "selling," not "servicing," confirms the distributive reading: salesmen sell, not service, and what they sell are vehicles, not services.

2. *The Section-by-Section Analysis.* On the day of the final floor vote on the 1974 FLSA Amendments, the House floor manager, Representative Dent, distributed a summary section-by-section analysis of the final bill. It read in part: "*Salesmen, Partsmen, and Mechanics.*—Provides an overtime exemption for *any salesman primarily engaged in selling automobiles*, trailers, trucks, farm implements, boats, or aircraft if employed by a [dealership]. Also provides an overtime exemption for partsmen and mechanics of automobile, truck, and farm implement dealerships." 120 Cong. Rec. 8602

(Mar. 28, 1974), *reprinted in* 2 *Legislative History of the Fair Labor Standards Amendments of 1974*, at 2391 (1976) (second emphasis added). No one thought Congress was exempting salesmen who engaged in anything other than selling vehicles or farm implements.

C. Congress, by Expressly Including "Partsman," Did Not Implicitly Add "Service Advisor" to the Statute

Petitioner concedes that service advisors do not go "under the hood to service cars." Br. 30; *accord id.* at 40, 42. Nevertheless, it argues that when Congress expressly added "partsman" to the list of exempt employees, it implicitly expanded the meaning of "servicing" beyond employees who "personally go under the hood to service cars" to all employees who are "integral to the servicing process." Br. 30, 42. It claims that "[p]artsmen are no more (or less) 'actually' or 'personally' involved in repairing automobiles than service advisors." Br. 22–23. Unless one reads "servicing" expansively enough to include both occupations, it asserts, "partsman" would be read "out of the statute." Br. 41.

Petitioner's unsupported assertions are mistaken. Partsmen, unlike service advisors, work with their hands on the parts of an automobile, work in the back with mechanics, and so wear uniforms suitable for dirty work.

1. *Some Partsmen Perform Automotive Manual Labor.* From 1966 through today, automobile dealership partsmen have had two distinct roles. Some sell parts directly to consumers, while others work

with and supply parts to the dealership's mechanics. *See 1966 Occupational Outlook Handbook* 312; Machinists' Amicus Br. 29–30; *see also* U.S. Dep't of Labor, *Occupational Outlook Handbook*, Bull. No. 1785, at 219 (1974–75 ed.) [*1974 Occupational Outlook Handbook*]. Both automobile and farm-implement dealerships often have a separate parts counter on the shop floor staffed by a few dedicated partsmen. Cal. State Dep't of Educ., *Auto Parts Man* 9–10 (1967); *see also* Charlie Cape, *They're Organized for Efficiency at Sell & Son*, Implement & Tractor, Feb. 7, 1973, at 9–11. "Nowhere in the automotive agency is cooperation needed more than" at the partsman's "shop counter, where mechanics and parts men meet." *Auto Parts Man* 49.

Some partsmen test, repair, and customize parts, grinding them down or building them up to the size needed. As the NLRB found, partsmen "dismantle engines and transmissions to obtain needed parts, fabricate and improvise parts, and assist mechanics in adjusting substitutes for unavailable standard auto parts." *Austin Ford, Inc.*, 136 N.L.R.B. 1398, 1400 (1962). "Parts countermen may use micrometers, calipers, fan-belt measurers, and other devices to measure parts for interchangeability." *1966 Occupational Outlook Handbook* 312–13. "[T]o determine whether parts are defective," partsmen may "use coil-condenser testers, spark plug testers, and other types of testing equipment." *Id.* at 313. Some partsmen, especially at smaller wholesalers, "may repair parts, using equipment such as brake riveting machines, brake drum lathes, valve refacers, and engine head grinders." *Id.*; *see 1974 Occupational Outlook Handbook* 219 (repeating all three quotations

nearly verbatim). And some partsmen "[m]ay measure engine parts, using precision measuring instruments, to determine whether similar parts may be machined down or built up to required size." Emp't & Training Admin., U.S. Dep't of Labor, *Dictionary of Occupational Titles* § 279.357-062 (4th ed. rev. 1991), https://perma.cc/6BCP-YN5A.

Even partsmen who do not repair or adjust parts still perform automotive manual labor. Many partsmen hand parts directly to mechanics over a counter or in the service bay. *Phil Long European Imps., LLC*, NLRB Case No. 27-RC-8071, at 8–9 (Aug. 24, 2000), https://perma.cc/8K8P-PWR2. Because they quite literally handle parts, they wear T-shirts, coveralls, jumpsuits, or similar work gear, not suits and ties or equivalent business attire. Compare, for instance, a photograph from DOL's 1966–67 handbook, showing a T-shirt-clad "[a]utomobile parts counterman dispens[ing] [a] part to [a] mechanic" by handing it to him over a counter, with the same handbook's photograph showing a service advisor wearing a tie. *Compare 1966 Occupational Outlook Handbook* 313, *reprinted at* App., *infra*, C3, *with id.* at 314–15, *reprinted at* App., *infra*, C2.

The court of appeals correctly reasoned that testing parts, repairing parts, and using expert knowledge to select and dispense appropriate replacement parts qualify as servicing. Pet. App. 14–15. Petitioner does not and cannot dispute that "test[ing] parts" and "repair[ing] parts" qualify. Pet. Br. 41. Rather, it argues that partsmen do not primarily perform these tasks. *Id.* But, in making this assertion, petitioner cites no industry authority, re-

lying instead upon the very DOL regulation that it persuaded this Court to invalidate as inadequately reasoned. *Id.* The NLRB's decision in *Austin Ford*, as well as industry and DOL's publications, are to the contrary.

In short, partsmen, like mechanics, work with their hands. They serve as mechanics' right-hand men or women. Like mechanics and unlike service advisors, partsmen service automobiles and may have the grease under their fingernails to prove it. *Contra* Pet. Br. 22–23, 40–42.

2. *Congress's Focus in Including Partsmen Was on Farm Implements, Not Automobiles.* Congress included partsmen in the exemption after extensive testimony focused on their roles in servicing farm implements as mechanics' right-hand men or women. *Minimum Wage-Hour Legislation: Hearings Before the Subcomm. on Labor Standards of the H. Comm. on Educ. & Labor*, 86th Cong. 699–711 (1960) (testimony of Paul Milliken, Executive Vice President, National Retail Farm Equipment Association); *Minimum Wage-Hour Amendments, 1965: Hearings on H.R. 8259 Before the H. Gen. Subcomm. on Labor of the H. Comm. on Educ. & Labor*, 89th Cong. 627–40 (1965) [*1965 Hearings*] (statement of National Farm & Power Equipment Dealers Association).

Even a short delay while awaiting equipment repairs could allow a farm's crops to rot, spoil, freeze, or become infested, ruining farmers financially. Harvesting delays cost farmers hundreds, if not thousands, of dollars every single day. Donnell Hunt, *Let's Analyze the Breakdown*, Implement & Tractor, Apr. 7, 1971, at 22, 28. Thus, mechanics *and* skilled

partsmen had to be on call at all hours of the day or night to "make emergency repairs" on "increasingly more complicated [and] highly sophisticated" machinery. *1965 Hearings* 630, 632; *see also* 112 Cong. Rec. 20,503 (Sen. Bayh) (citing the need for a trained partsman's knowledge and ability). Like the mechanic, the "parts man [had to be available to] respond[] to the emergency call of a farmer for a badly needed part." *1965 Hearings* 635. As Senator Mansfield explained, partsmen "ha[ve] to be available during harvest season—and before and after, to a lesser extent—at all hours of the day." 112 Cong. Rec. 20,503. Congress added partsmen to the exemption to accommodate these concerns of farm-implement dealers. *Id.* at 20,506.

3. *Including "Partsmen" in the Exemption Does Not Lead to Including Service Advisors.* Finally, petitioner's premise is that the inclusion of "partsman" in the exemption requires reading the rest of the statutory terms extremely broadly. By expressly including "partsman" in the exemption, Congress plainly wanted to include more than a null set. Even if it were not the most natural reading in isolation, "[s]ervicing automobiles" in the statute could be reasonably understood to include not only automotive manual labor on the vehicle itself, but also manual labor on and with a vehicle's parts. That meaning, however, would not help petitioner. There is no basis to expand "servicing" further, to include service advisors who work neither on or with a vehicle or its parts and who are *not* specifically named in the statute.

III. THE FLSA'S PURPOSES AND POLICIES CONFIRM THAT THE STATUTE PROTECTS SERVICE ADVISORS

A. Congress Limited the Exemption to Salesmen, Partsmen, and Mechanics Because of Their Irregular Hours and Locations

1. *Irregular Hours.* Congress enumerated three and only three occupations primarily because those employees often had to work unpredictable hours, including nights and weekends. Unlike other dealership employees working fixed hours on-site, salesmen were expected to "go out and sell an Oldsmobile, a Pontiac, or a Buick all day long and all night." 112 Cong. Rec. 20,504 (Sen. Yarborough). As Senator Yarborough, the Senate floor manager of the 1966 amendments explained, "[t]he reason for exempting the salesmen and the mechanics was the difficulty of their keeping regular hours. The salesman tries to get people mainly after their hours of work. In some cases a man will leave his job, get his wife, and go to look at automobiles. So the hours of a salesman are different." *Id.*

Partsmen and mechanics likewise must work irregular hours beyond normal business hours, often seasonally. Several farm-state senators emphasized that "during planting, cultivating and harvesting seasons, [farmers] may call on their dealers for parts at any time during the day or evening and on weekends." 112 Cong. Rec. 20,502 (Sen. Bayh). Senator Bayh recounted his own experience of "trying to get my tractor, combine, or corn-picker repaired, for which the mechanic could not find the necessary

part; and he had to call the partsman, *get him out of bed*, and get him to come down to the store to show him which part should be used." *Id.* at 20,504 (Sen. Bayh) (emphasis added); *accord id.* at 20,502–04 (Sens. Bayh, Hruska, and Mansfield).

2. *Off-Site Work.* In addition, mechanics and salesmen sometimes work off-site, which makes it "difficult to keep their time records." 112 Cong. Rec. 20,505 (Sen. Clark). The Senate floor manager gave the example of "the mechanic [who] goes out and answers calls in the rural areas. . . . who has to go out on the snow-covered field." *Id.* at 20,504 (Sen. Yarborough). "The mechanics and the salesmen . . . . do not get overtime because their work is outside." *Id.* It is "the kind of work outside the store which gives some excuse, at least, for exempting the salesman and the mechanic." *Id.* at 20,505 (Sen. Clark).

Service advisors did not present either of these concerns. In 1966 and 1974, as today, they worked ordinary, fixed schedules on-site. ***1966 Occupational Outlook Handbook*** 316; ***1974 Occupational Outlook Handbook*** 224. Employers want them to work more than forty hours every week so they can advise customers "in the early morning, when most customers bring their cars in for repairs, and in late afternoon, when they return for them" after work. *Id.* (both sources). Here, for instance, petitioner required respondents to work at least from 7 a.m. to 6 p.m. all the time, not just during harvest season or for emergencies. J.A. 54. None of this is true of partsmen and mechanics; even automobile salesmen need not work early mornings.

Thus, service advisors exemplify Congress's concern with combatting not only "'underpay,'" but also "the evil of 'overwork'" by promoting a "general maximum working week." *Overnight Transp. Co.*, 316 U.S. at 578 (quoting President Franklin Roosevelt). Congress saw no need to exempt service advisors or the numerous other dealership occupations that worked regular hours on-site.

B. Stretching the Exemption Beyond Salesmen, Partsmen, and Mechanics to "Core Sales and Service Employees," Those "Integral to the Servicing Process," or Entire Sales and Service Departments Would Disrupt Settled Industry Practices

1. *The § 207(i) Commission-Pay Exemption Allays Petitioner's Concerns About Reliance and Industry Disruption.* Applying the statute and regulation as written will not unsettle expectations or disrupt the dealership industry. *Contra* Pet. Br. 51–54. As a law firm reassured its California automobile dealership clients, a ruling that service advisors are entitled to overtime should not cause "panic," because "[m]any, if not most, auto dealerships already use commission pay structures for service advisors that comply with . . . [29 U.S.C.] Section 207(i)." Navarro *Decision Should Have Little Effect on California Auto Dealers*, SCALI L. FIRM (Mar. 29, 2015), https://perma.cc/ML5W-8T8X; *accord* John Huetter, *Sky NOT Falling on Overtime for Service Advisers, Auto Body Estimators After* Navarro, REPAIRER DRIVEN NEWS (Apr. 22, 2015), https://perma.cc/DW2C-JMBP ("[T]he *Navarro* decision [below] likely affects very few, if any, employers.").

Petitioner (Br. 34) makes much of how much the average and highest-paid service advisors earn in the highest-pay region of the country. But the only commissioned service advisors who cannot qualify for the § 207(*i*) exemption are the lowest-paid fraction of service advisors, those who earn less than one-and-a-half times the minimum wage—precisely the employees who most need time-and-a-half overtime pay. In any event, the FLSA is designed not only to ensure a minimum wage, but also to encourage reasonable working conditions—including a 40-hour week. *Overnight Motor Transp.*, 316 U.S. at 578.

Moreover, Congress has already provided statutory protections that allay dealerships' retroactivity concerns. The Portal-to-Portal Act provides an affirmative defense for employers who relied on prior DOL "interpretation[s], practice[s], or enforcement polic[ies]." 29 U.S.C. § 259. The Act thus already protects the precise good-faith "reliance" interests raised by petitioner. Br. 2, 4, 12, 17, 41, 51, 52. In her concurrence, Justice Ginsburg "doubt[ed] that reliance interests would pose an insurmountable obstacle" to ruling for respondents, given the availability of the § 207(*i*) exemption, the Portal-to-Portal Act defense, and "only conclusory references to industry reliance interests" by dealerships. Pet. App. 47–48 n.2.

2. *Petitioner's Amorphous Expansion of the Exemption Would Greatly Disrupt the Industry.* Adopting petitioner's novel theories would greatly disrupt numerous occupations and industry pay practices. Treating "the salesforce" and "the service staff" as "two *fully exempt* categories," as petitioner seeks (Br.

34), would remove overtime protections from numerous occupations currently covered by the FLSA, ranging from underbody-coating salesmen, warranty salesmen, lease salesmen, insurance salesmen, financing salesmen, marketers, and receptionists, to auto body repairmen, painters, upholsterers, lube technicians, towermen, car jockeys, detailers, and parts runners. *See* Machinists' Amicus Br. 21–33. The same would be true of exempting "[d]ealerships' core sales and service employees" or those "integral to the servicing process," whatever that means. Pet. Br. 8, 42; *accord id.* at 13, 26, 28, 31, 53, 54. Expanding the exemption thus would trigger a rash of lawsuits and ensnare courts in repeated line-drawing exercises divorced from the statutory text. There is no reason to stretch the exemption by analogy beyond the three specific occupations enumerated, and doing so would be tremendously disruptive.

CONCLUSION

This Court should affirm the judgment of the court of appeals.

Respectfully submitted.

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APPENDICES

Appendix A

Fair Labor Standards Amendments of 1966,
Pub. L. No. 89–601, § 209, 80 Stat. 830, 836
(codified at 29 U.S.C. § 213(b)(10) (1966))

TITLE II—REVISION OF EXEMPTIONS

* * * * *

Automobile, Aircraft, and Farm Implement Sales Establishments

Sec. 209.

(a) Section 13(a)(19) of such Act is repealed.

(b) Section 13(b) of such Act is amended by inserting after paragraph (9) the following new paragraph in lieu of the paragraph repealed by section 212(a) of this Act:

> "(10) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or"

Fair Labor Standards Amendments of 1974,
Pub. L. No. 93–259, § 14, 88 Stat. 55, 65
(codified at 29 U.S.C. § 213(b)(10))

Salesmen, Partsmen, and Mechanics

Sec. 14.

Section 13(b)(10) (relating to salesmen, partsmen, and mechanics) is amended to read as follows:

"(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; or

"(B) any salesman primarily engaged in selling trailers, boats, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or".

Appendix B

Federal Statutory Provisions That Are Phrased at Least in Part Distributively (*e.g.*, not all the nouns pair with all the verbs)

Appendix B-1
53 Distributively Phrased Statutes in Which the Number of Words in the First List Does Not Equal the Number of Words in the Second List

49 U.S.C. § 30301(4)	"'[M]otor vehicle' means a *vehicle, machine, tractor,* trailer, or semitrailer *propelled* or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle operated only on a rail line."
49 U.S.C. § 31301(12)	"'[M]otor vehicle' means a *vehicle, machine, tractor,* trailer, or semitrailer *propelled* or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated only

on a rail line or custom harvesting farm machinery."

49 U.S.C. § 13102(16) "The term 'motor vehicle' means a *vehicle, machine, tractor,* trailer, or semitrailer *propelled* or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service."

16 U.S.C. § 742c(e) "The Secretary is authorized under such terms and conditions and pursuant to regulations prescribed by him to use the funds appropriated under this section to make loans to commercial fishermen for the purpose of chartering fishing vessels pending the *construction* or repair of vessels *lost, destroyed,* or damaged by the earthquake of March 27, 1964, and subsequent tidal waves related thereto ...."

16 U.S.C. § 428i	"or shall *cut down* or *fell* or **remove** any ***timber***, **battle relic**, ***TREE***, or ***TREES GROWING*** or **being** upon such battlefield ...."
16 U.S.C. § 430q	"or shall *cut down* or *fell* or ***remove*** any ***timber***, **battle relic**, ***TREE*** or ***TREES GROWING*** or **being** upon said park ...."
16 U.S.C. § 425g	"or shall *cut down* or *fell* or ***remove*** any ***timber***, **battle relic**, ***TREE*** or ***TREES GROWING*** or **being** upon said park ...."
16 U.S.C. § 426i	"or shall *cut down* or *fell* or ***remove*** any ***timber***, **battle relic**, ***TREE***, or ***TREES GROWING*** or **being** upon such battlefield ...."
16 U.S.C. § 423f	"or shall *cut down* or *fell* or ***remove*** any ***timber***, **battle relic**, ***TREE*** or ***TREES GROWING*** or **being** upon said battlefield ...."
16 U.S.C. § 430i	"or shall *cut down* or *fell* or ***remove*** any ***timber***, **battle relic**, ***TREE***, or ***TREES GROWING*** or **being** upon said park ..."

16 U.S.C. § 430h	"or shall *cut down* or *fell* or ***remove*** any ***timber***, **battle relic**, ***TREE***, or ***TREES GROWING*** or **being** upon said park ...."
43 U.S.C. § 952	"Any *person*, livestock company, or **transportation corporation** engaged in ***breeding***, ***grazing***, ***driving***, *or* ***transporting*** livestock may construct reservoirs upon unoccupied public lands of the United States, not mineral or otherwise reserved, for the purpose of furnishing water to such livestock, and shall have control of such reservoir ...."
42 U.S.C. § 7384n(c)(4)	"In the case of an atomic weapons employee described in section 7384*l*(3)(B) of this title, the following doses of radiation shall be treated, for purposes of paragraph (3)(A) of this subsection, as part of the radiation dose received by the employee at such facility: (A) Any dose of ionizing radiation received by that employee from *facilities*, *materials*, *devices*, or by-products *used* or generated in the research, development, production, dismantlement, transportation, or testing of nuclear weapons, or from any activities to research, produce, process, store, remediate, or dispose of radioactive materials

by or on behalf of the Department of Energy ..."

Burmese Freedom and Democracy Act of 2003, Pub. L. 108-61, § 2(8), 117 Stat. 864	"The SPDC has demonstrably failed to cooperate with the United States in stopping the flood of *heroin* and methamphetamines being *grown*, *refined*, *manufactured*, and *transported* in areas under the control of the SPDC serving to flood the region and much of the world with these illicit drugs."
22 U.S.C. § 3929(b)	"Inspections, investigations, and audits conducted by or under the direction of the Inspector General shall include the systematic review and evaluation of the administration of activities and operations of Foreign Service posts and bureaus and other operating units of the Department of State, including an examination of-- (1) whether *financial transactions* and accounts are properly *conducted*, *maintained*, and *reported* ...."
42 U.S.C. § 1592e	"The Secretary of Housing and Urban Development may, in his discretion, upon request of the Secretary of Defense or his designee, transfer to the jurisdiction of the Department of

	Defense without reimbursement any land, *improvements*, *housing*, or *community facilities* *constructed* or acquired under the provisions of this subchapter and considered by the Department of Defense to be required for the purposes of the said Department."
15 U.S.C. § 272(e)(1)	"In carrying out the activities under subsection (c)(15), the Director-- ... (B) shall not prescribe or otherwise require ... (iii) that information or communications technology *products* or services be *designed*, *developed*, or *manufactured* in a particular manner."
15 U.S.C. § 636(b)(15)	"[The Small Business Administration] may make any loan for *repair*, *rehabilitation*, or *replacement* of property *damaged* or destroyed without regard to whether the required financial assistance is otherwise available from private sources ...."
22 U.S.C. § 2779a(d)(1)	"[T]he term 'offset agreement' means an agreement, arrangement, or understanding between a United States supplier of defense articles or defense services and a foreign

country under which the supplier agrees to purchase or acquire, or to promote the purchase or acquisition by other United States persons of, *goods* or services *produced*, *manufactured*, *grown*, or *extracted*, in whole or in part, in that foreign country in consideration for the purchase by the foreign country of defense articles or defense services from the supplier ...."

31 U.S.C. § 3801(b)(2) "[E]ach claim for property, services, or money is subject to this chapter regardless of whether such *property*, *services*, or *money* is actually *delivered* or paid ...."

12 U.S.C. § 632 "Nothing in this section shall be deemed to repeal or to modify in any manner any of the provisions of the Gold Reserve Act of 1934, as amended, the Silver Purchase Act of 1934, as amended, or subdivision (b) of section 5 of the Act of October 6, 1917, as amended, or any *actions*, **REGULATIONS**, **RULES**, **ORDERS**, or **PROCLAMATIONS** *taken*, promulgated, **made**, or ISSUED pursuant to any of such statutes."

5 U.S.C. § 504(a)(2)	"A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any *attorney*, *agent*, or expert witness *representing* or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed."
16 U.S.C. § 572(c)	"That when by the terms of a written agreement either party thereto furnishes materials, supplies, equipment, or services for fire emergencies in excess of its proportionate share, adjustment may be made by reimbursement or by replacement in kind of *supplies*, *materials*, and equipment *consumed* or destroyed in excess of the furnishing party's proportionate share."
22 U.S.C. § 8123(b)(2)	"A judge of the United States shall promptly issue an administrative search warrant authorizing the requested comple-

	mentary access upon an affidavit submitted by the United States Government ... (F) listing the *items*, *documents*, and *areas* to be *searched* and seized ..."
22 U.S.C. § 6725(b)(2)	"The judge of the United States shall promptly issue a warrant authorizing the requested inspection upon an affidavit submitted by the United States Government showing that ... (D) the *items*, *documents*, and *areas* to be *searched* and seized ..."
47 U.S.C. § 155(c)(3)	"Any *order*, *decision*, *report*, or action *made* or taken pursuant to any such delegation, unless reviewed as provided in paragraph (4) of this subsection, shall have the same force and effect, and shall be made, evidenced, and enforced in the same manner, as orders, decisions, reports, or other actions of the Commission."
47 U.S.C. § 155(c)(4)	"Any person aggrieved by any such order, decision, report or action may file an application for review by the Commission within such time and in such manner as the Commission

shall prescribe, and every such application shall be passed upon by the Commission. The Commission, on its own initiative, may review in whole or in part, at such time and in such manner as it shall determine, any *order*, *decision*, *report*, or action *made* or taken pursuant to any delegation under paragraph (1) of this subsection."

47 U.S.C. § 155(c)(7) "The filing of an application for review under this subsection shall be a condition precedent to judicial review of any *order*, *decision*, *report*, or action *made* or taken pursuant to a delegation under paragraph (1) of this subsection."

16 U.S.C. § 916g(a) "Subject to the provisions of the convention, any person authorized to enforce ... the regulations of the Secretary of Commerce may seize, whenever and wherever lawfully found, all *whales* or whale products *taken*, *processed*, or *possessed* contrary to the provisions of the [International Convention for the Regulation of Whaling] ...."

16 U.S.C. § 668b(c) — "That all *powers*, rights, and **duties *conferred*** or **imposed** by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this subchapter, be *exercised* or **performed** ...."

16 U.S.C. § 670j(d) — "except that all *powers*, rights, and **duties *conferred*** or **imposed** by the customs laws upon any officer or employee of the Department of the Treasury shall, for the purposes of this section, be *exercised* or **performed** ...."

16 U.S.C. § 2439(e) — "except that all *powers*, rights, and **duties *conferred*** or **imposed** by the customs laws upon any officer or employee of the Customs Service may, for the purposes of this chapter, also be *exercised* or **performed** ...."

16 U.S.C. § 3374(b) — "except that all *powers*, rights, and **duties *conferred*** or **imposed** by the customs laws upon any officer or employee of the Treasury Department may, for the purposes of this chapter also be *exercised* or **performed** ...."

16 U.S.C. § 2409(e) — "except that all *powers*, rights, and **duties *conferred*** or **imposed** by the customs laws upon any officer or employee of the Customs Service may, for the purposes of this chapter, also be *exercised* or **performed** ...."

16 U.S.C. § 742j-1(f) — "except that all *powers*, rights, and **duties *conferred*** or **imposed** by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this section, be *exercised* or **performed** by the Secretary of the Interior or by such persons as he may designate."

16 U.S.C. § 1540(e)(5) — "except that all *powers*, rights, and **duties *conferred*** or **imposed** by the customs laws upon any officer or employee of the Treasury Department shall, for the purposes of this chapter, be *exercised* or **performed** by the Secretary or by such persons as he may designate."

15 U.S.C. § 77jjj(a)(3) — "If the indenture to be qualified requires or permits the appointment of one or more co-trustees in addition to such institutional trustee, the *rights*, powers, **duties**, and OBLIGA-

TIONS ***CONFERRED*** or **IMPOSED** upon the trustees or any of them shall be ***CONFERRED*** or **IMPOSED** upon and *exercised* or **PERFORMED** by such institutional trustee, or such institutional trustee and such co-trustees jointly ..."

8 U.S.C. § 1104(a)

"He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the department or independent establishment under whose jurisdiction the employee is serving, any of the *powers*, functions, or **duties** ***conferred*** or **imposed** by this chapter or regulations issued thereunder upon officers or employees of the Department of State or of the American Foreign Service."

50 U.S.C. § 4556(b)

"The termination of the authority granted in any title or section of this Act, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any *right*, liability, or **offense** *incurred* or **committed** prior to the termination date of such title or of

such rule, regulation, or order."

33 U.S.C. § 702i

"The provisions of sections 407, 408, 411, 412, and 413 of this title are made applicable to all *lands*, *waters*, *easements*, and other *property* and *rights acquired* or constructed under the provisions of sections ... of this title."

15 U.S.C. § 13(d)

"It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any *products* or commodities *manufactured*, *sold*, or *offered for sale* by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities."

23 U.S.C. § 403(c)(1)	"[T]he Secretary is authorized to carry out, on a cost-shared basis, collaborative research and development with ... (A) non-Federal entities, including State and local governments, *colleges*, *universities*, *corporations*, partnerships, sole proprietorships, *organizations*, and *trade associations* that are *incorporated* or established under the laws of any State or the United States ...."
33 U.S.C. § 2313(a)	"For the purpose of improving the state of engineering and construction in the United States and consistent with the civil works mission of the Army Corps of Engineers, the Secretary is authorized to utilize Army Corps of Engineers laboratories and research centers to undertake, on a cost-shared basis, collaborative research and development with non-Federal entities, including State and local government, *colleges* and *universities*, and *corporations*, partnerships, sole proprietorships, and *trade associations* which are *incorporated* or established under the laws of any of the several States of the United States or the District of Columbia."

23 U.S.C. § 502(c)(1)

"To encourage innovative solutions to surface transportation problems and stimulate the deployment of new technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with-- (A) ... non-Federal entities, including State and local governments, foreign governments, *colleges* and *universities*, *corporations*, *institutions*, partnerships, sole proprietorships, and *trade associations* that are *incorporated* or established under the laws of any State ...."

22 U.S.C. § 2459(b)

"If in any judicial proceeding in any such court any such *process*, judgment, **decree**, or ORDER is ***SOUGHT***, **ISSUED**, or **ENTERED**, the United States attorney for the judicial district within which such proceeding is pending shall be entitled as of right to intervene as a party to that proceeding ...."

18 U.S.C. § 218

"In addition to any other remedies provided by law the President or, under regulations prescribed by him, the head of any department or agency involved, may declare void and rescind any ***CONTRACT***, ***LOAN***, ***GRANT***, ***SUBSIDY***, ***LICENSE***, ***RIGHT***,

PERMIT, ***FRANCHISE***, ***USE***, AUTHORITY, *PRIVILEGE*, ***BENEFIT***, *CERTIFICATE*, *RULING*, *DECISION*, OPINION, or RATE SCHEDULE *awarded*, granted, **paid**, FURNISHED, or published, or the performance of any service or transfer or delivery of any thing to, by or for any agency of the United States or officer or employee of the United States or person acting on behalf thereof, in relation to which there has been a final conviction for any violation of this chapter, and the United States shall be entitled to recover in addition to any penalty prescribed by law or in a contract the amount expended or the thing transferred or delivered on its behalf, or the reasonable value thereof."

15 U.S.C. § 717d(a)

"Whenever the Commission ... shall find that any *rate*, charge, or **classification** ***demanded***, ***observed***, *charged*, or *collected* by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential

....”

16 U.S.C. § 824e(a)	“Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any *rate*, charge, or **classification**, ***demanded***, ***observed***, *charged*, or *collected* by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential ....”
15 U.S.C. § 2065(a)	“[O]fficers or employees duly designated by the [Consumer Product Safety Commission] ... are authorized-- (1) to enter, at reasonable times, (A) any *factory*, warehouse, or **establishment** in which consumer products are ***manufactured*** or **held**, in connection with distribution in commerce ....”
Transfer of Forest Tree Nursery Facilities to States, Pub. L. No. 87-	“restoration to the trust fund of an amount equal to the residual value of any *supplies*, *materials*, *equipment*, or *improvements* *acquired* or constructed with trust funds and

492, § 1, 76 Stat. 107 (1962)	transferred to State forestry work other than the soil bank program; that such program under said Soil Bank Act has been discontinued, but the need for the trees continues to be great ..."
42 U.S.C. § 16423(c)(1)	"The term 'qualifying advanced power system technology facility' means a facility using an advanced *fuel cell, turbine,* or *hybrid power system* or power storage system to *generate* or store electric energy."
39 U.S.C. § 3001(k)(1)(C)	"the term 'skill contest' means a puzzle, game, competition, or other contest in which-- ... (iii) a *purchase, payment,* or donation is *required* or implied to be required to enter the contest ...."
7 U.S.C. § 1627b(f)(2)	"The Board shall ... (B) review any *contract, direct loan, loan guarantee, cooperative agreement, equity interest, investment, repayable grant,* and *grant* to be *made* or entered into by the Center and any financial assistance provided to the Center ...."

Appendix B-2
37 Distributively Phrased Statutes in Which the First Word(s) of the First List Pair Only with the First Word(s) of the Second List and the Last Word(s) Pair Only with the Last Word(s)

49 U.S.C. § 30301(4)	"'[M]otor vehicle' means a *vehicle, machine, tractor,* trailer, or semitrailer *propelled* or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle operated only on a rail line."
49 U.S.C. § 31301(12)	"'[M]otor vehicle' means a *vehicle, machine, tractor,* trailer, or semitrailer *propelled* or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated only on a rail line or custom harvesting farm machinery."
49 U.S.C. § 13102(16)	"The term 'motor vehicle' means a *vehicle, machine, tractor,* trailer, or semitrailer *propelled* or drawn by mechanical power and used on a highway in transportation, or a combi-

nation determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service."

16 U.S.C. § 742c(e)

"The Secretary is authorized under such terms and conditions and pursuant to regulations prescribed by him to use the funds appropriated under this section to make loans to commercial fishermen for the purpose of chartering fishing vessels pending the *construction* or repair of vessels *lost, destroyed,* or damaged by the earthquake of March 27, 1964, and subsequent tidal waves related thereto ...."

7 U.S.C. § 7470(d)

"On completion of a referendum under subsection (b) of this section, the Secretary shall suspend or terminate the order that was subject to the referendum at the end of the marketing year if-- (1) the suspension or termination of the order is favored by not less than a majority of the producers and importers voting in the referendum; and (2) the *producers* and

importers *produce* and import more than 50 percent of the total volume of kiwifruit *produced* and imported by persons voting in the referendum."

7 U.S.C. § 8401(a)(1)(B) "In determining whether to include an agent or toxin on the list under subparagraph (A), the Secretary shall-- (i) consider ... (III) the availability and effectiveness of *pharmacotherapies* and prophylaxis to *treat* and prevent any illness caused by the agent or toxin ..."

7 U.S.C. § 4611(b)(1) "No order issued under this chapter shall be effective unless the Secretary determines that-- (A) the order is approved by a majority of the producers, importers, and if covered by the order, handlers, voting in the referendum; and (B) the *producers*, importers, and **handlers** comprising the majority *produced*, imported, and **handled** not less than 50 percent of the quantity of the honey and honey products *produced*, imported, and **handled** during the representative period by the persons voting in the referendum."

42 U.S.C. § 300j(c)(1)

"Such order shall apply to such manufacturers, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any *manufacturer*, producer, or **processor** of such chemical or substance who *manufactures*, produces, or **processes** (as the case may be) such chemical or substance solely for its own use."

42 U.S.C. § 262a(a)(1)(B)

"In determining whether to include an agent or toxin on the list under subparagraph (A), the Secretary shall-- (i) consider-- ... (III) the availability and effectiveness of *pharmacotherapies* and immunizations to *treat* and prevent any illness resulting from infection by the agent or toxin ..."

43 U.S.C. § 902

"If at any time prior to the institution of suit by the Attorney General to cancel any *patent* or certification of lands erroneously *patented* or certified a claim or statement is presented to the Secretary of the Interior by or on behalf of any person

or persons ..."

11 U.S.C. § 1502(8) "[A]ny property subject to *attachment* or garnishment that may properly be *seized* or garnished by an action in a Federal or State court in the United States."

7 U.S.C. § 6506(a) "A program established under this chapter shall ... (4) require each certified organic farm or each certified organic handling operation to certify to the Secretary, the governing State official (if applicable), and the certifying agent on an annual basis, that such *farm* or handler has not *produced* or handled any agricultural product sold or labeled as organically produced except in accordance with this chapter ..."

33 U.S.C. § 1504(c)(2) "Each application shall include such financial, technical, and other information as the Secretary deems necessary or appropriate. Such information shall include, but need not be limited to ... (G) the location and capacity of existing and proposed *storage facilities* and pipelines which will *store* or

transport oil transported through the deepwater port ..."

15 U.S.C. § 636(b)(3)(A)(iii)

"[T]he term 'substantial economic injury' means an economic harm to a business concern that results in the inability of the business concern ... (III) to *market*, produce, or **provide** a product or service ordinarily *marketed*, produced, or **provided** by the business concern."

26 U.S.C. § 834(c)(6)

"In the application of section 1212 for purposes of this section, the net capital loss for the taxable year shall be the amount by which losses for such year from sales or exchanges of capital assets exceeds the sum of the gains from such sales or exchanges and whichever of the following amounts is the lesser: ... or (B) losses from the *sale* or exchange of capital assets *sold* or exchanged to obtain funds to meet abnormal insurance losses and to provide for the payment of dividends and similar distributions to policyholders."

12 U.S.C.

"which shall be in the Department of Housing and Urban Development and which shall retain the *assets* and liabilities

§ 1717(a)(2)(A)	*acquired* and incurred under sections 1720 and 1721 of this title prior to such date ..."
12 U.S.C. § 1717(a)(2)(B)	"The other such separated portion shall be a body corporate to be known as Federal National Mortgage Association (hereinafter referred to as the "corporation"), which shall retain the *assets* and liabilities *acquired* and incurred under sections 1718 and 1719 ..."
7 U.S.C. § 5822(g)(1)(E)	"In the case of any *tenant* or lessee who has *rented* or leased the farm (with or without a written option for annual renewal or periodic renewals) for a period of two or more of the immediately preceding years, the Secretary shall consider the refusal by a landlord, without reasonable cause other than simply for the purpose of enrollment in the program, to renew such rental or lease as an involuntary displacement in the absence of a written consent to such nonrenewal by the tenant or lessee."

25 U.S.C. § 1633(b)	"For the purpose of implementing the provisions of this subchapter, the Secretary shall assure that the rates of pay for personnel engaged in the *construction* or renovation of facilities *constructed* or renovated in whole or in part by funds made available pursuant to this subchapter are not less than the prevailing local wage rates for similar work as determined in accordance with sections 3141-3144, 3146, and 3147 of Title 40."
10 U.S.C. § 2563(b)	"The Secretary may designate facilities referred to in subsection (a) as the facilities from which *articles* and services *manufactured* or performed by such facilities may be sold under this section."
10 U.S.C. § 2563(a)(2)(A)	"Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are *articles* and services that are *manufactured* or performed by any working-capital funded industrial facility of the armed forces."

10 U.S.C. § 2563(c)(1)	"A sale of articles or services may be made under this section only if ... (C) the *articles* or services can be substantially *manufactured* or performed by the industrial facility concerned with only incidental subcontracting ...."
7 U.S.C. § 1a(18)	"The term 'eligible contract participant' means ... (v) a corporation, partnership, proprietorship, organization, trust, or other entity-- ... (III) that-- ... (bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an *asset* or liability *owned* or incurred or reasonably likely to be *owned* or incurred by the entity in the conduct of the entity's business ...."
10 U.S.C. § 2740(2)	"A case in which-- (A) the *loss* or damage occurred while the *lost* or damaged goods were in the possession of an ocean carrier that was transporting, loading, or unloading the goods under a Department of Defense contract for ocean carriage ..."

10 U.S.C. § 2740(3)(C)	"[A] claim submitted to the delivering transportation service provider or carrier is denied in whole or in part because the *loss* or damage occurred while the *lost* or damaged goods were in the custody of a prior transportation service provider or carrier or government entity."
7 U.S.C. § 950(a)(3)	"[T]he telephone bank shall cease to be an agency of the United States, but shall continue in existence in perpetuity as an instrumentality of the United States and as a banking corporation with all of the *powers* and limitations *conferred* or imposed by this subchapter except such as shall have lapsed pursuant to the provisions of this subchapter."
47 U.S.C. § 326	"Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no *regulation* or condition shall be *promulgated* or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."

26 U.S.C. § 312(f)(1)(B)	"*Gain* or loss so realized shall *increase* or decrease the earnings and profits to, but not beyond, the extent to which such a realized gain or loss was recognized in computing taxable income under the law applicable to the year in which such sale or disposition was made."
33 U.S.C. § 1341(a)(4)	"[T]he licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the *facility* or activity shall be *operated* or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated."
30 U.S.C. § 625	"Notwithstanding any other provisions of this chapter, all mining claims and mill sites or mineral rights located under the terms of this chapter or otherwise contained on the public lands as described in section 621 of this title shall be used only for the purposes specified in section 621 of this title and no *facility* or activity shall be *erected* or conducted thereon

for other purposes."

10 U.S.C. § 1074b(a)(2) "A member of, and a designated applicant for membership in, the Senior Reserve Officers' Training Corps who incurs or aggravates an injury, illness, or disease-- (A) in the line of duty while performing duties under section 2109 of this title; (B) while *traveling directly to* or from the place at which that member or applicant *is to perform* or has performed duties pursuant to section 2109 of this title ...."

28 U.S.C. § 1453(d) This section shall not apply to any class action that solely involves-- ... (2) a claim that relates to the internal affairs or governance of a *corporation* or other form of business enterprise and arises under or by virtue of the laws of the State in which such *corporation* or business enterprise is *incorporated* or organized ...."

28 U.S.C. § 1332(d)(9) "Paragraph (2) shall not apply to any class action that solely involves a claim ... (B) that relates to the internal affairs or governance of a *corporation* or other form of business enter-

prise and that arises under or by virtue of the laws of the State in which such *corporation* or business enterprise is *incorporated* or organized ...."

42 U.S.C. § 6977(b)(1) "Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed ... (B) to train *instructors* and supervisory personnel to *train* or supervise persons in occupations involving the design, operation, and maintenance of solid waste management and resource recovery equipment and facilities."

12 U.S.C. § 1821(n)(1)(B) "Upon the granting of a charter to a bridge depository institution, the bridge depository institution may-- (i) assume such deposits of such insured depository *institution* or institutions that *is* or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; (ii) assume such other liabilities (including liabilities associated with any trust business) of such insured depository

institution or institutions that *is* or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; (iii) purchase such assets (including assets associated with any trust business) of such insured depository *institution* or institutions that *is* or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate ...."

8 U.S.C. § 1101(b)(1)(G)(i)(V)

"[I]n the case of a child who has not been adopted-- ... (bb) the prospective adoptive *parent* or parents *has* or have complied with any pre-adoption requirements of the child's proposed residence ...."

5 U.S.C. § 8313(b)

"The prohibition on payment of annuity or retired pay under subsection (a) of this section applies to the period after the end of the 1-year period and continues until-- ... (2) the individual returns and thereafter the *indictment* or charges *is* or are dismissed ...."

Appendix B-3
15 Other Distributively Phrased Statutes

28 U.S.C. § 636(a) — "Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law-- (1) all *powers* and duties *conferred* or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts ..."

48 U.S.C. § 1422c(b) — "All officers shall have such *powers* and *duties* as may be *conferred* or imposed on them by law or by executive regulation of the Governor not inconsistent with any law."

25 U.S.C. § 112 — "The superintendent, agent, or subagent, together with such military officer as the President may direct, shall be present, and certify to the delivery of all *goods* and money required to be paid or *delivered* to the Indians."

15 U.S.C. § 69g(a)(1) "Any fur product or fur shall be liable to be proceeded against in the district court of the United States for the district in which found, and to be seized for confiscation by process of libel for condemnation, if the Commission has reasonable cause to believe such *fur product* or fur is being *manufactured* or *held for shipment*, or *shipped*, or *held for sale or exchange* after shipment, in commerce, in violation of the provisions of this subchapter ..."

46 U.S.C. § 3302(c)(3)(C) "In this paragraph, the term 'proprietary cargo' means cargo that ... (iii) consists of *fish* or fish products *harvested* or *processed* by the owner of the vessel or any affiliated entity or subsidiary."

42 U.S.C. § 3611(a) "The Secretary may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this subchapter. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the *subpoenas* or discovery were ordered or *served* in aid of a civil action in the United States

district court for the district in which the investigation is taking place."

23 U.S.C. § 109(l)(2)(A) "[T]he term 'utility facility' means any privately, publicly, or cooperatively owned *line*, facility, or **system** for **producing**, ***transmitting***, or ***distributing*** communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public ...."

19 U.S.C. § 81r(c) "The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Board and it shall thereupon file in the court the record in the proceedings held before it under this section, as provided in section 2112 of Title 28. The *testimony* and evidence *taken* or *submitted* before the Board, duly certified and filed as a part of the record, shall be considered by the court as the evidence in

the case."

7 U.S.C. § 8(b)	"The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of Title 28. The *testimony* and evidence *taken* or *submitted* before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evidence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order."
54 U.S.C. § 101118(a)	"The National Park Foundation and any *income* or property *received* or owned by it, and all transactions relating to that income or property, shall be exempt from all Federal, State, and local taxation."
16 U.S.C. § 583j-2(e)(3)	"The Foundation and any *income* or property *received* or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation

with respect thereto."

22 U.S.C. § 2124c(j) "The Foundation and any *income* or property *received* or owned by it, and all transactions relating to such income or property, shall be exempt from all Federal, State, and local taxation with respect thereto."

16 U.S.C. § 916c(a) "It shall be unlawful for any person ... (2) to ship, transport, purchase, sell, offer for sale, import, export, or have in possession any whale or *whale products* taken or *processed* in violation of the [International Convention for the Regulation of Whaling], or of any regulation of the Commission, or of this subchapter, or of any regulation of the Secretary of Commerce ...."

20 U.S.C. § 1067j(b) "The Secretary shall establish procedures for reviewing and evaluating *grants* and contracts *made* or entered into under such programs. Procedures for reviewing grant applications, based on the peer review system, or contracts for financial assistance under this subchapter may not be subject to any re-

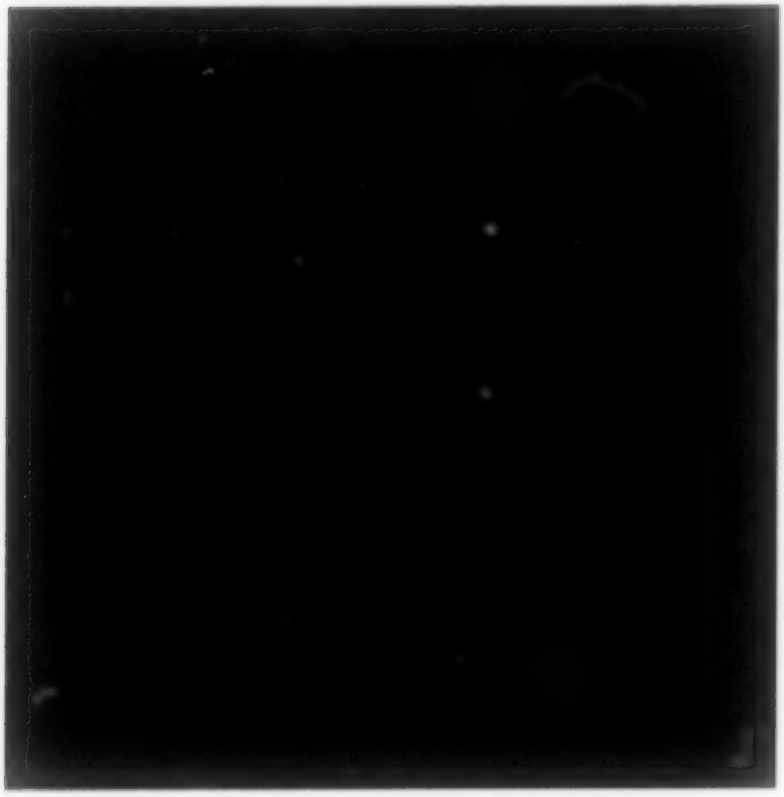
view outside of officials responsible for the administration of the Minority Science and Engineering Improvement Programs."

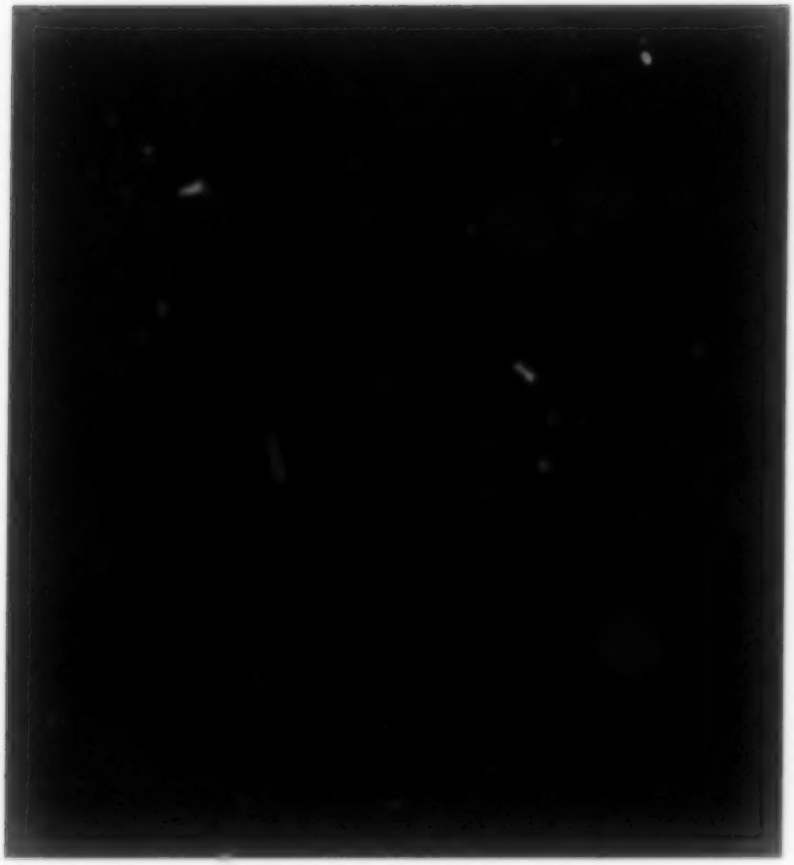
12 U.S.C. § 1735e-1

"In the administration of housing assistance programs, the Secretary of Housing and Urban Development shall encourage the use of *materials* and <u>products</u> *mined* and <u>*produced*</u> in the United States."

Appendix C

BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK, BULL. NO. 1450, **at 310, 315, 313, 477 (1966–67 ed.)**





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